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SENATE

EXECUTIVE REPT.
No. 98–5

TREATY OF FRIENDSHIP WITH TUVALU

MARCH 21, 1983.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Ex. W, 96–1]

The Committee on Foreign Relations, to which was referred the Treaty of Friendship between the Government of the United States of America and the Government of Tuvalu, signed at Funafuti on February 7, 1979, having considered the same, reports favorably thereon without amendment and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The primary purpose of the treaty is to settle on terms acceptable to both governments the conflicting claims to islands in Tuvalu (formerly the Ellice Islands) in the South Pacific Ocean.

BACKGROUND

The territory covered in the renunication of claim includes Funafuti, the capital of Tuvalu (formerly the Ellice Islands). The Islands were discovered in March, 1819, by an American merchant vessel. During 1840–41 the four islands were mapped by the United States exploration expedition under Commander Charles Wilkes, United States Navy. The United States first formally declared sovereignty over the islands in 1939. During World War II the United States built and manned military bases in Funafuti and Nukufetau, but these were abandoned after the War, and the United States established no other presence on the islands.

Great Britain proclaimed the Ellice Islands, including the four islands, a protectorate in September 1892. In 1915 the islands were annexed by the British as part of the Gilbert and Ellice Islands Colony. The Ellice Islands were separated from the Gilberts in 1975 and became known as Tuvalu. The United States took no action to dispute the British claim for almost a half century following the 1892 British

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proclamation of protectorate status for the Ellice Islands. The only resource in the area are the fisheries located off shore.

In preparation for the independence of Tuvalu on October 1, 1978, a delegation from the United States met with representatives of the Government of Tuvalu to negotiate the Treaty of Friendship. Further meetings in Tuvalu led to a successful conclusion of the negotiations, and the United States-Tuvalu Treaty of Friendship was signed on February 7, 1979, in Funafuti.

Under the terms of the Treaty, the United States renounces all claims to sovereignty over Funafuti Atoll, Nukufetau Atoll, and the islands known as Nukulaelae (or Nukulailai), and Niulakita (or Nurakia).

The Secretary of State has stated that the terms of the Treaty accord with the interests and desires of both parties and promote United States foreign policy objectives in the South Pacific.

The primary interests of the United States in the region are: to promote a secure and peaceful South Pacific, to assure nondiscriminatory future access to the marine resources of the region, and to assure that the supply of fish from Tuvaluan waters to the canneries in American Samoa is continued. This contributes materially to the viability of the economy of American Samoa. The Tuvalu Treaty protects each of these interests.

The Secretary has further stated that by renouncing its claims the United States removes a potentially disruptive dispute with this tiny independent nation (population 8,000) and demonstrates to the South Pacific island states that the United States seeks a close, friendly and cooperative relationship with the independent states of the region.

COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on December 1, 1981. The following individuals have testified on this treaty: Deputy Assistant Secretary of State for East Asian and Pacific Affairs Daniel A. O'Donohue; Ambassador William Bodde, U.S. Ambassador in Fiji; Rear Admiral Donald S. Jones, Director for East Asian and Pacific Affairs in the Office of the Assistant Secretary of Defense for International Security Affairs; Mr. Terry Fortune, Assistant Legal Advisor for East Asia, Department of State; Mr. David Colson, Associate Legal Advisor for Oceans, Environmental and Scientific Affairs, Department of State; the Honorable Peter Coleman, Governor of American Samoa; Mr. Mark J. Seidenberg of Los Angeles, California; and the Honorable Frederick Rohlfing of Honolulu, Minority Leader of the Hawaii House of Representatives.

On January 28, 1982 the Committee considered the Treaty, but, in the absence of a physical quorum, deferred a vote until February 2. On this date, the Committee, by a vote of 13 to 2, ordered it reported favorably to the Senate for its advice and consent. Voting in favor of the Treaty were Senators Percy, Baker, Hayakawa, Lugar, Kassebaum, Boschwitz, Pressler, Pell, Biden, Glenn, Tsongas, Cranston, and Dodd. In opposition were Senators Helms and Zorinsky.

Pursuant to rule 30.2 of the Senate, the treaty, not having been considered by the Senate, was returned to the Committee at the adjournment of the 97th Congress.

On January 27, 1983, the Committee considered the treaty and agreed to Senator East's request that he be allowed to testify before the Committee in order to outline the reservations which he held concerning the treaty. Senator East expressed particular concern that the national interest of the United States had not been taken fully into account. Accordingly, the Committee held a public hearing on March 8, 1983. The following individuals testified: Senator East, Admiral Thomas Moorer, U.S. Navy (Retired), and Rear Admiral Robert J. Hanks, U.S. Navy (Retired).

The Committee considered Senator East's testimony, particularly in the light of the views of Secretary of Defense Weinberger (see appendix), of the U.S. Commander-in-Chief, Pacific (see appendix), of the Department of State (see appendix), and of the Prime Minister of New Zealand (see appendix). The Committee concluded that the treaty was in the best interests of the United States and that the treaty as submitted best protected those interests on a long range basis. The Committee took particular note of the relationship of the treaty partner to our ANZUS allies, Australia and New Zealand, and of our allies' views in support of U.S. ratification. (Hearing printed in appendix.)

On March 8, 1983, the Committee again considered the treaty, but delayed further consideration for one week. On March 15, 1983, the Committee considered the treaty, but, in the absence of a physical quorum, deferred a vote until March 16. On this date, the Committee, by a vote of 15 to 1, ordered the treaty reported favorably to the Senate for its advice and consent to ratification. Voting in favor of the treaty were: Senators Percy, Baker, Lugar, Mathias, Kassebaum, Boschwitz, Pressler, Murkowski, Pell, Biden, Glenn, Sarbanes, Zorinsky, Tsongas, and Dodd. In opposition was Senator Helms.

SECTION-BY-SECTION ANALYSIS

The Department of State has provided the following section-by-section analysis of the Treaty:

Article I of the Treaty recognizes the sovereignty of the Republic of Kiribati over the islands in question.

Articles II and III provide for consultation in times of "international crisis" should the United States request the use of Tuvaluan territory for military purposes, or should Tuvalu request assistance and support. The two governments also agree to consult regarding any use of Tuvaluan territory for military purposes by third parties. These consultations will contribute to the peace and stability of the region.

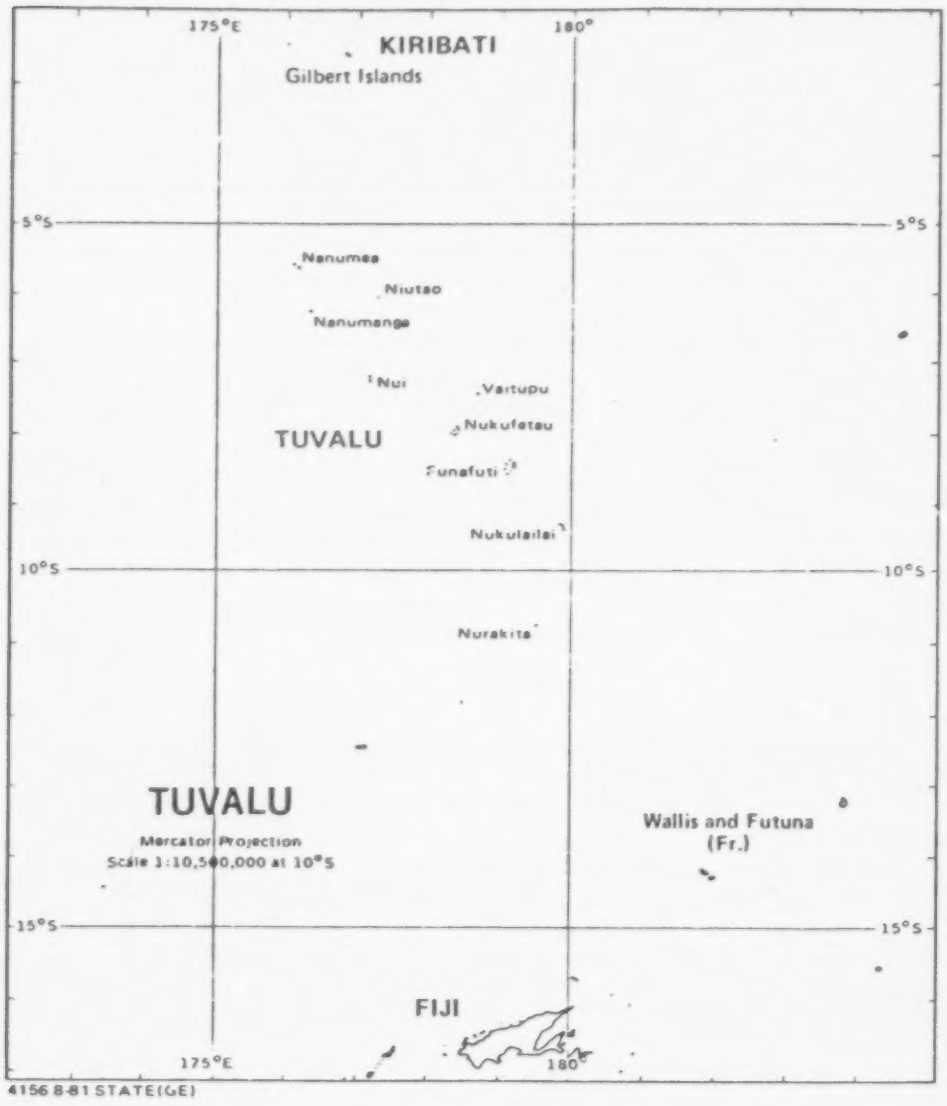
Article IV provides for cooperation between Tuvalu and American Samoa in the economic development of fisheries off their respective coasts. Finally, the United States and Tuvalu agree to consult directly and through regional organizations in matters relating to conservation, management, utilization, and exploitation of fisheries resources for mutual benefit.

COST ESTIMATE

The treaty will have no budgetary impact and ratification will not require the authorization or appropriation of any additional funds, according to the Administration.

TEXT OF RESOLUTION OF RATIFICATION

Resolved, (*two-thirds of the Senators present concurring therein*), That the Senate advise and consent to the ratification of the Treaty of Friendship Between the United States of America and Tuvalu, signed at Funafuti on February 7, 1979.



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APPENDIX

COMMANDER IN CHIEF PACIFIC,
Camp H. M. Smith, Hawaii, March 9, 1983.

Hon. CHARLES H. PERCY,
U.S. Senate,
Senate Dirksen Building,
Washington, D.C.

DEAR SENATOR PERCY: I am pleased to share with you my reasons for supporting ratification of the four Pacific islands treaties that are now being considered by your committee.

As you are aware, since World War II the only military installations the U.S. had anywhere in the immediate area of these islands was a missile test facility with headquarters on Canton Island, with some additional instrumentation on Enderbury, Birnie and Hull Islands. As for the Canton Islands complex, it was used for a few years in the early 1970's and subsequently maintained in a caretaker status at a cost of several million dollars a year. By 1979 this cost could no longer be justified and the facilities were closed. I might add that our use of these islands was for test and research and not for prospective combat operations. Our current and presently foreseen missile test requirements are and can be met by the Kwajalein Missile Range and occasional testing in broad ocean areas.

My concern with the islands, since they are currently not in use militarily, is to deny their use to unfriendly powers and to assure our re-entry if necessary. The treaties with Kiribati and Tuvalu specifically provide against military use of the islands by third countries without consultation with the U.S. while New Zealand's respansibility for the defense of the Cook Islands and Tokelau gives assurance that those islands will not be used by hostile forces. In the unlikely event that the United States were to develop a requirement for bases in Kiribati, the treaty provides for possible future use of the Canton complex subject to an agreement to be negotiated between the two governments. The treaty with Tuvalu provides that in times of international crisis, the two countries agree to consult on any requests we might make for use of Tuvaluan territory for military purposes.

The point of all this is that the United States has no present need for strategic bases in these islands and the treaty provisions adequately protect our interests. From my perspective, United States military interests in the area covered by these treaties have been properly addressed and ratification of them would be in our best interest.

Sincerely,

R. L. J. LONG.

NEW ZEALAND EMBASSY,
Washington, D.C., March 11, 1983.

HON. GEORGE P. SHULTZ,
Secretary of State,
Department of State.

MY DEAR MR. SECRETARY: I have been requested to pass to you the attached copy of a letter from the Prime Minister of New Zealand, the Rt. Hon. R. D. Muldoon to the Vice President.

I am also sending a copy of this letter to the Chairman of the Senate Foreign Relations Committee Senator Percy.

Yours sincerely,

Rt. Hon. L. R. ADAMS-SCHNEIDER,
Ambassador.

DEAR MR. VICE PRESIDENT: You will recall from our discussions in Wellington in May last year my keen concern, in the wider interests of the United States in the South Pacific, to see the friendship treaties negotiated between the United States and the Cook Islands, Kiribati, Tuvalu and Tokelau ratified as soon as possible.

I have been following closely the progress of the Treaties' hearings in the Senate Foreign Relations Committee under the able Chairmanship of Senator Percy. I note with deep concern not only the delaying tactics adopted by opponents of the Treaties but more importantly their apparent misapprehension of political and historical realities in the region and of where the United States' true interests lie. The evidence and comments presented to the Committee earlier this week by opponents of the Treaties tends to suggest that they believe there is some scope for amendment or re-negotiation.

Against the background set out more fully in a recent letter from our Ambassador to Senator Percy and others—of which you have seen a copy—you will be fully aware that any attempt to renegotiate the Treaties in respect to Tokelau would be unacceptable. While it is for these countries to speak for themselves, I do not believe there are any grounds on which the United States could expect to get a more favourable outcome in renewed negotiations with the Cook Islands, Kiribati and Tuvalu.

It does seem to me that it would be most desirable if the Administration could make this situation clear to those who have expressed doubts about the Treaties before the Senate Committee considers this subject again next Tuesday, 15 March.

I trust that with your understanding of the issues you will do your utmost to ensure that the Committee produces a recommendation for early and positive action by the Senate on the Treaties.

Yours sincerely,

R. D. MULDOON.

PACIFIC ISLAND TREATIES

TUESDAY, MARCH 8, 1983

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room SD-419, Dirksen Senate Office Building, the Honorable Frank H. Murkowski presiding.

Present: Senators Murkowski and Helms.

Senator MURKOWSKI. The committee will come to order.

The purpose of the hearing today is to continue the committee's examination of four Treaties of Friendship negotiated by representatives of the United States and the Governments of Kiribati, Tuvalu and New Zealand on behalf of the Tokelau, and the Cook Islands.

The purpose of these treaties is to settle the status of 25 small islands in the Southwest Pacific region. These treaties as presently written would provide for certain security consultations with Kiribati, Tuvalu, and would establish maritime boundaries for American Samoa, and would facilitate accesss to fishing grounds for U.S. fishing boats on a nondiscriminatory basis.

The United States has inconsistently maintained claims dating in some instances from the late 19th century to these islands. Certain of the islands have been involved in military activities for United States purposes during World War II and other purposes thereafter.

The administration and the State Department have indicated their support for Senate consent to ratification of these treaties. The committee held hearings regarding these treaties in December 1981 and reported resolutions of ratification favorably to the floor by a vote of 13 to 2 in February 1982.

The treaties were not considered by the Senate before its adjournment last December, and therefore were returned to the committee in accordance with the rules of the Senate.

Because I joined the committee last December I did not personally have an opportunity to participate in the prior committee consideration of these treaties. However, it is my understanding that the two independent nations, Tuvalu and Kiribati, petitioned the United Nations which endorsed their independence in a vote which the United States also approved. Yet, in some history books the United States is in the unusual position of being on record today as claiming the entire nation of Tokelau. These treaties we consider now would settle such claims.

Some concerns have been raised as to the advisability of recognizing officially that which was accomplished many years ago. Before U.S. claims to this region are officially renounced, we must be certain

that U.S. strategic military interests will not be adversely affected by the ratification of these treaties.

During the course of the prior proceeding before the committee on this issue, representatives of the Department of Defense indicated that the treaties did not threaten U.S. military interests in the region. This finding is understandable in an era when military capabilities are vastly different from those which existed even during the Vietnam war.

Today a single Grumman Hawkeye radar aircraft can survey 238,000 square miles of ocean, a fact which makes the four million square miles of ocean surrounding the islands which these treaties address seem perhaps not as critically important to the U.S. military engagements as they once were.

Another suggestion which has been made pertains to the mere relinquishment of the United States claims as being somehow unconstitutional. The situation which exists in regard to these islands cannot be profitably compared to the Panama Canal or others. We do not build these islands, nor is it clear that we ever really had title or claim to them.

The last concern which I have heard raised over these treaties regards the United States access to resources in the region. It is difficult to accept the argument that the United States should have some greater rights to fish in these areas than other nations have, so long as the United States fishermen are guaranteed an equal opportunity to fishing rights which these governments would control.

In January of this year Senator East indicated in a letter to Chairman Percy of the full committee that he would like to be afforded an opportunity to provide his views on the treaties and certain of these concerns which I have already touched upon.

If there is no objection, I would ask that Senator East's letter to Senator Percy and the Chairman's reply agreeing to Senator East's request to be entered into the record at this point. If there is no objection, so ordered.

[The letters referred to follow:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., January 27, 1983.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you may be aware, I have been studying the four treaties currently before your Commitee which propose to cede to other nations 25 U.S. Pacific islands and the surrounding 4 million square miles of ocean territory.

During the course of my review of the proposed treaties I have become concerned that certain factors affecting the national interest of the United States may not have been taken into full account. Constitutional and Separation of Powers issues are also involved. For those reasons, I respectfully request that I be allowed to testify before the Committee on Foreign Relations to outline to the Committee the reservations concerning the proposed treaties that I hold. I may offer amendments to the treaties, and if so, I would like to explain my proposals and ask their consideration by the Committee.

I would need only a few days to prepare my testimony, and I am not seeking to impede committee action in any way. However, I do feel the Committee should be apprised of my doubts as to the wisdom of the treaties and respectfully ask that I be afforded that opportunity.

With very best personal regards, I am

Sincerely,

JOHN P. EAST,
U.S. Senator.

U. S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C., February 2, 1983.

Hon. JOHN P. EAST,
Chairman, Senate Subcommittee on Separation of Powers, Committee on the Judiciary, Washington, D.C.

DEAR SENATOR EAST: Thank you for your letter requesting to testify before the Committee on the four pending treaties involving a number of South Pacific nations. We will do our best to accommodate your request.

I believe that our staffs were in contact regarding the possibility of your testimony tomorrow morning, and I regret that you are not able to appear at that time. I would like to move expeditiously to report these treaties and have them considered by the full Senate, since U.S. ratification has already been delayed for too long. Therefore, I would hope that you would be prepared to appear before the Committee during the week immediately following our recess.

We will give careful consideration to your arguments, and any amendments proposed by you to the treaties.

Sincerely,

CHARLES H. PERCY,
Chairman.

Senator MURKOWSKI. With this brief introduction to the Pacific Island treaties as a background, I would like to take this opportunity to welcome our witnesses to the Committee on Foreign Relations. It is a pleasure to have with us this morning my distinguished colleague from North Carolina, Senator East; and I welcome you, Senator, to the committee. I believe that you are accompanied this morning by Admiral Thomas Moorer, United States Navy (Retired), a former Commander in Chief in the Pacific Theater, former Chief of Naval Operations and former Chairman of the Joint Chiefs of Staff, surely one of our nation's most distinguished naval officers.

Also with you, I believe, is Rear Admiral Hanks, also United States Navy (Retired), recently as a Director of Strategic Plans and Policy in the Office of Chief of Naval Operations.

I welcome to the committee Admiral Moorer and Admiral Hanks.

Finally, I also have been informed that there is in the audience a representative of the United States Department of State, Mr. Terry Fortune, who will introduce himself if questions are raised concerning matters upon which he is qualified to testify.

It is a pleasure to have you gentlemen with us. We look forward to your comments on these treaties. I believe we are scheduled to have a vote this morning, and we would recess the hearing to accommodate that vote.

Before turning to the testimony of our witnesses, I do not believe there are any others in the chamber who wish to make any opening remarks. That being the case, I would ask Senator East to please proceed.

Senator HELMS. Mr. Chairman.

Senator MURKOWSKI. Senator Helms.

Senator HELMS. If you would indulge me just one moment, I wish to make a part of the record a letter from the State Department which is secret and therefore cannot be discussed, but it can, under the rules, be made a part of the record.

I ask unanimous consent that the letter at this point be made a part of the record.

Senator MURKOWSKI. Without objection, so ordered.

[The letter referred to is classified and is retained in committee files.]

Senator MURKOWSKI. Please go ahead, Senator.

Senator East.

So as a practical matter, as any lawyer reading them would know, and as a matter of contractual obligation here, we have only consultation rights for ten years with the exception of a few of the islands in the Gilbert chain where they do need our approval for third party military use.

But at the end of 10 years, in all cases, we no longer have any prerogatives, any rights, or any claims. So as a practical matter what these treaties do is give up what the treaties acknowledge themselves are claims of sovereignty that the United States government previously had.

Now, in a more tranquil world one might say well, that vacating the area would be all right. It might be done in the spirit of generosity or whatever. And I have no quarrel with generosity.

But, Mr. Chairman, what concerns me is that in the kind of world in which we live in terms of Soviet adventurism and her proxies throughout the world, we are giving up areas that, for example, during World War II and the Korean War were looked upon as having very significant strategic importance.

The Government of Kiribati may sound remote to Americans, but for those who remember World War II, these are the Gilbert Islands. And Tuvalu may sound obscure and remote to us today, but those were the Ellice Islands. And the South Pacific islands were extremely important in the whole strategic operation of World War II, as every schoolboy and schoolgirl knows.

Soviet penetration into Southeast Asia is already underway. They now have Cam Rahn Bay in Southeast Asia. And I do not think it takes a great reading of contemporary history to suggest that once the United States abandons its position here, which it does through these treaties, that one could anticipate as night follows day there will be Soviet interest and penetration. I think it would take a massive act of faith and a large dose of naivete along with it not to believe that is the case.

Mr. Chairman, first of all, I do not see as a lawyer that phrase "in contract," I do not see any consideration here being received. We give up our admitted claim to sovereignty and get nothing in return except

"consultation." That means nothing. It is purely gratuitous. There is nothing we receive in return.

I think it has to be acknowledged what the treaties do when you get down to the final point, or as the trite phrase "at the bottom line," simply means, the U.S. totally relinquishes our claims to sovereignty and our assertion of sovereignty, which again the treaties themselves and the letters of submittal acknowledge.

Then the question arises to me, Mr. Chairman, as one Senator to whom are we giving these islands. Now, we speak of the government of Kiribati and we speak of the government of Tuvalu, but interestingly, as the figures indicate, you are talking about 25, a total here of islands covering an area of 6 million square miles.

STATEMENT OF HON JOHN P. EAST, A UNITED STATES SENATOR FROM THE STATE OF NORTH CAROLINA, ACCOMPANIED BY ADM. THOMAS MOORER, U.S. NAVY (RETIRED); AND ADM. ROBERT J. HANKS, U.S. NAVY (RETIRED)

Senator EAST. Mr. Chairman, I wish to thank you and the Foreign Relations Committee for the opportunity to be here this morning.

What I would like to do, Mr. Chairman, is make some extemporaneous observations about why I am concerned with the treaties before the Committee and to offer reservations I have to these treaties. I shall attempt to make my remarks very brief. I will submit a full written statement to the committee and also the reservations that I would like for the committee to consider will be included as a part of the written record.

But rather than weary you distinguished gentlemen with reading to you, what I would like to do is state my overview and concerns about these treaties. I will leave to the two distinguished Admirals the opportunity to speak for themselves and to speak particularly as to the strategic importance of these areas as they see them and understand them.

I speak as one Senator expressing some very strong concerns that I have about these treaties. So let me please briefly outline my concerns, Mr. Chairman, for the record.

There are four treaties involved and one must acknowledge that they deal with very diverse situations; so it is impossible to bring together in one collective statement a complete and totally satisfying analysis of all four of the treaties.

There are certain common bonds that exist in each of the treaties. The particular treaties I am focusing upon to illustrate my point are those with the Governments of Tuvalu and Kiribati. What these treaties in effect do, Mr. Chairman, is first they acknowledge our having claimed sovereignty over these islands. Both treaties acknowledge sovereignty as do the letters of submittal from former Secretary of State, Cyrus Vance. And the treaties themselves do acknowledge the claim of this government to sovereignty.

They acknowledge that "the United States has heretofore claimed sovereignty over the islands."

Now, we are as these treaties purport to do, relinquish that sovereignty. In exchange for relinquishing sovereignty we in effect get con-

sultation rights for a period of ten years. At the end of ten years, again it is explicitly stated that our sovereignty or claims thereto are given up in perpetuity. And after ten years either party upon six months notice can terminate the treaties.

I question whether those are governable territories from the standpoint of a central government. I think you have to acknowledge that geographically you are dealing with a large ocean area, a great myriad of islands of considerable strategic importance where I doubt that any of the particular governments can guarantee anything.

So not only are we not receiving somec onsideration for giving up these particular areas, we are giving them up to governments that I cannot foresee could genuinely be held accountable. At least the record has not demonstrated their accountability. And clearly in view of Soviet intentions, activities, and interests in this area, I am concerned, Mr. Chairman, whether or not this is a bad move.

I do not wish to stretch the comparison too far, but I remember, Mr. Chairman, during the Panama Canal Treaty debate we were told, as these treaties here suggest, that if we give up the islands as we gave up the Panama Canal, we would earn peace and good will in the area, gain respect, and that simply is not true.

The great issue today dominating the news in Central America is El Salvador. I defy anyone to tell me that the giving up of the Panama Canal and our sovereign claim over it has enhanced the cause for peace and stability and freedom in Central America. It simply is not so.

I think our giving up of the Panama Canal was interpreted by the Soviet Union and her proxies as a sign of weakness. We no longer had the desire to maintain our own territory in our own hemisphere. Invasion of Afghanistan followed, and Soviet and Cuban adventurism in Central America followed quickly afoot.

Now, as the focus shifts here to Southeast Asia, I sense deja vu. We were told Southeast Asia is inconsequential. We know better than that now. We were driven out. Unfortunately, the Soviet Union is now in the Cam Rahn Bay. The forces of Vietnam took over Cambodia at Soviet instruction.

Again I ask you, Mr. Chairman, could the Senate Foreign Relations Committee guarantee anyone with a straight face that they could not anticipate once these islands are given up the very strong likelihood of Soviet adventurism in these areas? And the plot thickens, and the perimeter shrinks. And as one Senator I am concerned, and my purpose in being here is, in my own small way, to underscore that concern and to question the whole thrust of these treaties in terms of their current provisions.

First, as a minimum, Mr. Chairman, I am submitting a series of reservations that I think ought to be included. Just to briefly summarize those, the first would extend consulation and approval rights indefinitely in regard to third parties using our facilities and setting up military facilities on the islands.

The second one would be the assurance that reasonable rates will be charged on certain islands for our use, military or otherwise.

The third reservation would guarantee the right of U.S. nationals to mine the seabeds without regard to termination of the treaty.

The fourth one would guarantee fishing rights for U.S. flag vessels within Kiribati fishery limits, also without regard to the termination of the treaty.

And finally, Mr. Chairman, I would argue, though I acknowledge there are critics to the contrary, that there be a reservation honoring *the requirement under Article IV, Section 3, Clause 2 of the Constitution* relating to the disposal of territory or other property.

The Constitution says the Congress shall have the power to dispose and make all needful rules and regulations respecting the territory or other property belonging to the United States. The phrase "Congress" would include not only the Senate but the House of Representatives. And I would argue, Mr. Chairman, that it is a very reasonable and indeed well-nigh constitutionally-required provision here that the House of Representatives consent to our giving up our sovereignty over these particular areas if that is the direction in which we choose to go.

In essence, Mr. Chairman, that is the sum and substance of my concern. I question the wisdom of entering into treaties that give up sovereign claims of the United States Government to governments that may be unable to honor whatever obligations there are under these treaties. I submit there are no obligations, merely consultation rights. I suspect and anticipate even prior to the end of the ten-year agreement of the treaties, let alone thereafter, we could expect in terms of the historical record and because of their strategic importance, specifically Soviet and perhaps even ultimately by then Chinese—I do not know—Communist Chinese interest in these particular areas.

I would submit the strategic importance, is historically and in the reasonably near and distant future compelling. I think the Senate Foreign Relations Committee, the United States Senate, and the United States Congress ought to look long and hard before they repeat the same scenario that we followed with the Panama Canal. I think the comparisons are telling, that lessons can be learned, and that the mistakes of the past need not be repeated.

I thank you, Mr. Chairman, for the opportunity to be here and to make this statement. I know your time is precious, the same with the Admirals, the same with Senator Helms; so I shall cease and desist. Again, I have indicated my concerns will be given to the committee in full written form, which will include my written testimony and my reservations, so that they may be looked at more thoroughly.

I would happily answer any questions that you or Senator Helms might have. Having done that, I would find it necessary to leave because of some pressing business which we always seem to have around here, and leave the floor to Admirals Moorer and Hanks.

Thank you. Mr. Chairman.

Senator MURKOWSKI. Thank you very much, Senator East.

Senator Helms.

[No response.]

Senator MURKOWSKI. I wondered, Senator East, in your comments outlining specifics that you feel should be included in any treaty consideration if you might be supportive of an option for continuation of a time frame beyond the initial 10 years.

You indicated indefinitely, and in the material that I would not be agreeable to the various countries in question here. And I recognize

an option assumes that both sides are willing to agree, while your contention of an indefinite time frame is, of course, entirely different.

But it seems that we would initially be at odds in proceeding with the treaty unless there can be some agreement on that point.

Senator EAST. It is a good point, Mr. Chairman. Yes, I think we need it of an indefinite character.

Again, if I might make the comparison with the Panama Canal situation which I believe is even less compelling here, the concern I had in the Panama Canal case was if, for example, you were dealing with long-established governments, democratic governments with continuity, you can reasonably project the near or long term where a contemporary agreement might lead. But to me here it is like throwing a spear into the void. You have not the slightest idea of where it is going.

I hope not to speak in patronizing way toward the Governments of Kiribati and Tuvalu, but I submit no matter how strong they are they would find it very difficult to guarantee to defend such a wide area of 18 islands, and millions of square miles of ocean. And I think that again the Soviet penetration will occur.

If, again, we were dealing with a long-term established democratic government of continuity and one we could rely and project upon, if we were dealing with the Government of Canada, for example, or the Government of England, one would obviously be less concerned about this sort of thing.

But as in the case of Panama, there you were dealing with a dictatorship that aws taken over by a coup d'etat in 1968, and I do not think anyone can guarantee what the Government of Panama might be in 1 year or 2 years, let alone 5 or 10 years.

And I do not know that anyone—again, with all due respect to the peoples of these areas and their governments—what they would be in a position or capacity to do. So if you extended the time of the reservations beyond ten years, I would agree, Mr. Chairman.

I appreciate your excellent thought. It would be a step in the right direction. But it still simply extends beyond the ten-year period, maybe to 15 and maybe to 20, a giving up of a claim of sovereignty which goes back some time in history, though again I think it would be an improvement.

Senator MURKOWSKI. Senator East, I wonder if you have any opinions on how we might maintain our control over these areas if the treaty is not approved. I believe that from the information that I have, the British objected when the United States originally sought to assert claims to these island areas in the late thirties, and if these treaties were not ratified, how would you suggest that our country maintain control over these areas against the objection of the residents from those areas?

Senator EAST. Well, when one has objections from the residents, I suppose that again one could use the parallel of the Panama Canal. There were those who opposed, those who supported. I do not know if there is available a public opinion Gallup poll on what the residents of all of these islands prefer or want. Perhaps there is a poll.

Again, not to belittle the point, it seems to me, Mr. Chairman, in the kind of world in which we live today, when we are confronted with international powers, the strength and adventurism of the Soviet

Union, who themselves, of course, are extremely expansive in thought and deed, that where we have sovereign claim over something going back a long period of time, that one reaches point where sometimes what you do is simply plant your flag, not necessarily literally, but figuratively, and say, we have this claim. We intend to maintain it. It has strong strategic importance to it.

I guess another way to put it is, I suppose in any region you can always conjure up so-called opposition. It seems to me it has been a part of the mentality of American foreign policy that everyone else has legitimate national self-interests everyone else can object and oppose our interests, but we never seem to have any interests or rights. We do not even have them in our own hemisphere any more. We did not have them with our own territory, in our own hemisphere, as in the case of the Panama Canal Treaty.

I sometimes wonder if the State Department knows of any particular claim that we have. I sometimes wonder whether, by its standards, it would not be willing to relinquish large parts of the continental United States, where claims to title and sovereignty are somewhat tenuous.

In my state of North Carolina, for example, one might go back to the settlement of Roanoke Island in 1587, in the problem of the infinite regress. I do not know how you "prove" our claim to Roanoke Island, but there are, of course, going to be "opponents" to it. Yet the claim is there. Our use of rights based upon that claim has been obvious. We relied upon it. We have built military installations there. I did not see any diminution of their strategic importance to us.

I would stand firm, Mr. Chairman. It seems to me it would greatly enhance the opportunity for passage of these treaties in the Senate if we could at least be guaranteed to some extent through reservations that in perpetuity certain narrowly focused points would be covered. I believe it is mandatory that the United States must not only consult, but also give approval to the islands before a third party can occupy the islands. We must guard against specifically the Soviet Union today—it could be some other power in the future. Who knows? Times change. History changes. Balance of powers change. The basic nature of man does not change, and I suspect we will be confronted with challenges in Asia as we have for a long time.

To maintain in perpetuity certainly narrow focused rights it seems to me, should be a bare minimum in exchange for relinquishing sovereignty. The United States should not only have the right to approve and veto third party military use, but to also be guaranteed fishing rights, access to the mineral resources of these areas. Apparently manganese and oil have genuine potential there. I do not understand why all this must be relinquished in one fell swoop for absolutely nothing except pious pronouncements about "consultation rights" and wanting to contribute to peace—peace in the world.

I have heard that refrain, Mr. Chairman, so many times. If I were the only man in the United States Senate that felt otherwise, I would still protest it. I think I know silliness when I see it in terms of the realities of power in the world today. Therefore, I think, Mr. Chairman, as a bare minimum, we need reservations that stretch in perpetuity, whereas a time cap, I think, would possibly lessen the severity of the crime, but not eliminate it.

Senator MURKOWSKI. I think you would agree that the action taken by the United States so far has undoubtedly led a portion of the world in observing our actions as we debate this matter today to be postured with some inconsistency.

As I indicated in my opening remarks, the two independent nations of Tuvalu and Kiribati had petitioned the United Nations, which approved of their independence, and we as a country took part in that vote, voted to approve it. Yet I guess a case can be made that we are in the position of being recorded as claiming the entire nation of Tuvalu.

Your points on strategic importance to this country of those areas, I think, are most noteworthy. The inconsistency obviously is the fact that the Pentagon, the Joint Chiefs of Staff, the Department of Defense, and the State Department all seem to indicate that these particular areas have little strategic value, which obviously leaves the Committee in a bit of a dilemma in the sense of trying to substantiate the validity and the importance of maintaining these areas.

Obviously, the action we have taken in the United Nations is in conflicts here, and we are down to the level of the Senate Foreign Relations Subcommittee to try to respond to this. I do not know whether there is anything specific that you might add to that dilemma, but I think you would agree that we have a bit of an inconsistency, a bit of a dilemma.

We have people that are responsible for our national defense who have indicated that the strategic importance is not what it was some time ago. I would certainly look forward to the remarks of Admiral Moorer and Admiral Hanks. I assume Senator East will give some attention to their professional opinions in that regard.

I have no further questions at this time. I would perhaps reserve some that may come in additionally. I would ask Senator Helms to proceed at this time.

Senator HELMS. Thank you, Mr. Chairman.

I shall be brief, because, as you have indicated, there is a vote pending in the Senate.

I am anxious to hear Admiral Moorer and Admiral Hanks. I will say that Senator East is right on target in stating his apprehensions. I say that as a Senator who participated as vigorously as I could in trying to sound the same warnings with reference to the giveaway of the Panama Canal. I use the word "giveaway" advisedly, because we have seen by subsequent events that that is precisely what it was.

I think Senator East is unquestionably correct in his suggestion that the Constitution required both Houses of Congress, not merely the Senate, to act on this because it is, after all, the disposal of property. But more importantly in all of that is the fact that this action is being taken by Congress with almost no awareness by the American people.

Now, the Panama Canal situation was different. The American people and many patriotic organizations, including the American Legion, the Veterans of Foreign Wars, and others, have no difficulty understanding the geographic implications of the Panama Canal Treaties.

I do not know how many Americans even know where Tuvalu is, or any of the other properties involved. But if they did know, and

if they knew that the Soviet Union regards this territory as strategically important, it might result in a greater interest on the part of the American people.

Senator East, I commend you for raising the questions that you have. I must say that I would be a little bit apprehensive about reservations versus amendments to the treaties, because I recall in the instance of the Panama Canal Treaties, there were two reservations, one by Senator Burdick and one by Senator DeConcini. Had the Senate not approved those reservations, the treaties would have gone down. There is no question about that. The Senate would not have achieved a two-thirds vote.

But what happened when the government of Panama was confronted with these reservations after the fact? He rejected the reservations, but it was too late. The Panama Canal had been given away, and the United States and the American people were snookered. There is nothing we can do about it.

I think that is part and parcel of the Senator's apprehensions about this, and I commend him.

Mr. Chairman, I wonder if I might vary from the customary Senate procedure and ask a question of Admiral Moorer and Admiral Hawks, because I fear that I will not get back. I have another Committee meeting.

Senator MURKOWSKI. You may proceed.

Senator HELMS. Admiral Moorer, you have been to the areas affected by these treaties?

Admiral MOORER. Yes, indeed, Senator Helms. During World War II, I fought on and among those islands. I have visited most of them. I, for instance, was on Canton Island the day that Hitler marched into Russia, and that is the reason I always remember Canton Island. I have been all through the list of Canton, Hull, Funafuti, Makin, Terara, Christmas Island, and so on.

So, I am very familiar with the area.

Senator HELMS. That was kind of a leading question. I knew that you had. Now, I want to follow that with the basic question. Are these islands strategically important to the United States?

Admiral MOORER. Yes, they are very important from a strategic point of view, and I would like to expand on that, for the mere reason that the Chairman just expressed when he said that the Hawkeye aircraft could cover a large area. The real importance is that technology has advanced to the point where the Earth has been significantly and is shrinking all the time. And we are moving into the space arena.

Consequently, this area is most important as time goes on and we begin to use space for military purposes. Soviets are already using space for military purposes. The Soviets are in the business of setting up ground stations, observation points, impact points for new weapons, etc., and they are going to keep increasing Soviet strength. I am very concerned, for instance, about our use of Kwajalein Island and the opposition to our testing by the local people, which has caused us to reduce our rights there by, I think, some 20 years.

The people are demanding more fees, and the next step we will see is, we are not allowed to use it at all. So there is no question in my mind that the United States is committing herself to shrink in terms of the

areas in which we have necessary control and use of to protect our national interests.

Senator HELMS. Thank you, Admiral.

Admiral Hanks, would you say that the Southern Pacific is a backup for the Western Pacific?

Admiral HANKS. There is no question about it, Senator. My prepared statement, which you will have access to, specifically addresses the strategic value of this portion of the world. I believe if you use a National Geographic map and a paint store yardstick, you will come to the conclusion very quickly that these islands and those associated with them in that part of the world lie across two main arteries.

One runs from the west coast of the United States and the Panama Canal to Australia and New Zealand, absolutely vital to our mutual defense treaty with those two islands. If you look at the presence of Soviet nuclear powered attack submarines now operating from bases we built in Vietnam, it becomes clear that they now have the capacity for the first time in Soviet history to endanger allied western shipping, United States shipping in the South China Sea as well as exiting the Strait of Malacca.

That means that in any conflict situation, you are likely to see the more southerly routes connecting the Indian Ocean and the Pacific to become of extreme importance, and by that I mean Lombok and Sunda Straits in Indonesia, Torres Strait between New Guinea and Australia, and indeed Bass Strait between Tazmania and Australia.

And if you project those lines then into the Pacific, this string of islands lays directly across them. So I think there can be little argument with the strategic importance of the islands and the position that they occupy, given the interdependent world in which we live, and the importance utilization of sea lines of communication and trade play insofar as the security of the United States is concerned.

Senator HELMS. Admiral Moorer, let me ask you one more question. You noted that I placed in the record a classified document about the Soviet Union, and its interest in the region. Now, I know you haven't seen the document, but I would like for you, for the record, at this time to state your opinion of the Soviet interest in these islands.

Admiral MOORE. In the first place, Senator Helms, I think that it is a matter of record that the Soviets have been operating ships in the general area of the Cook Islands, for instance, and the Soviets are engaged in a grand design of worldwide presence, establishing a worldwide presence, and step by step.

Just look at history: Angola, Mozambique, Afghanistan, Cam Ranh Bay, that Admiral Hanks mentioned, and certainly there is interest in this area. Perhaps the people in the executive and legislative branches do not understand the strategic significance of this, but the Soviets do, and the Soviets are doing what they can right now to gain a foothold, and gain a presence in this very vital sea area.

I think that there is a tendency in this country to just look at NATO and the Atlantic, but the Pacific is vitally important, and this four to six million square miles of area that are occupied by these islands are very vital, as Admiral Hanks so well explained.

Senator HELMS. Mr. Chairman, I want to comment that we have before us three distinguished American who are stating apprehen-

sions which are absolutely legitimate. As Senator East has indicated, history teaches us a lot, sometimes sad lessons.

I happen to be Chairman of the Western Hemisphere Affairs Subcommittee of the Foreign Relations Committee. It puts me in contact with a great many people in Central and South America, and the question that I most often hear from those who are trying to remain anti-Communist in their leadership of their respective countries is, why did you do it, talking about the Panama Canal.

I wish that there had been more vocal opposition from Central and South America at that time. There was some, but not an awful lot.

Senator East, I want to commend you again for requesting this time, and Admiral Moorer, you are, without question, one of the great leaders in the country, and Admiral Hanks, I feel the same way about you.

The point should not be overlooked that Admiral Moorer has served his country long and well, his last assignment was that of Chairman of the Joint Chiefs of Staff I thank all three of you. Thank you very much.

Senator MURKOWSKI. Thank you, Senator Helms.

I would like to introduce into the record at this time a statement by the Secretary of Defense, Secretary Weinberger, and letters accompanying this documentation from Powell Moore, Assistant Secretary for Congressional Relations, and the Ambassador to New Zealand, Mr. Browne, the Ambassador to Australia, Mr. Nesen, the Ambassador to Fiji, Mr. Eckert, the Ambassador to Papua, New Guinea, Mr. Schafer.

I might point out one excerpt from Secretary Weinberger's letter.

Senator HELMS. May I also ask unanimous consent that the statement and attachments of the Society for the Protection of American Sovereignty be put in the record?

Senator MURKOWSKI. Without objection.

[The material referred to follows:]

THE SECRETARY OF DEFENSE,
Washington, D.C., March 7, 1983.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR CHUCK: As your Committee resumes deliberations on the four Pacific Island Treaties, I would like to share with you my deep concern that delay in ratification is jeopardizing our security interests in the Pacific.

Since the end of World War II, the island states of the South Pacific have undergone extensive political change. Instead of dealing with dependencies of former colonial powers, we must negotiate with newly independent states which are entitled to respect for their sovereignty. By renouncing our extremely tenuous claims to the islands in dispute we remove impediments to developing enduring relationships and enhance the ability to achieve our strategic objectives.

Our strategic interests in the South Pacific are focused on developing states that are stable, peaceful, free from great power rivalry, and that look on the United States as a dependable friend. Failure to approve these carefully crafted and negotiated treaties will prejudice our grow-

ing relations with those island states and will inevitably lead to resentment and distrust of the United States. Moreover, failure to ratify the treaties strains rather than strengthens our relationships with all the Pacific Island states.

From a Defense perspective, we feel that the treaties adequately protect United States strategic interests. We have made a thorough study of our requirements for the islands covered by the treaties. We do not have now, nor do we foresee, a military requirement anywhere in the immediate area of the islands covered by the treaties. Indeed, the only U.S. installations in the region since World War II (missile testing facilities on Canton, Enderbury, Birnie and Hull Islands) were closed in 1979 because they no longer met our mission requirements and were too costly to maintain.

Suspicion of our motives and intentions provides the ideal opening for political penetration of the region by the Soviet Union. Failure to ratify the treaties would also introduce unnecessary irritants in our relationships with our ANZUS allies who are deeply concerned with and committed to stability in the region. Australian and New Zealand officials at the ministerial level have raised this issue with me personally. I share their view that the security of the South Pacific and the important lines of communication that pass through it serve our mutual security interests and depend in large measure on the continued pro-Western orientation of the newly independent island states. Our security interests and those of our allies are best served if the states in the region are friendly to us, are disposed to permit access to the region by our military forces should a contingency arise, and oppose a Soviet presence—military, political, or economic.

As in the past, the Department of Defense strongly supports the treaties as being in our national interest. I urge that the Senate provide its advice and consent so that the treaties may be formally ratified.

Sincerely,

CASPAR W. WEINBERGER.

U.S. DEPARTMENT OF STATE,
Washington, D.C.

Hon. CHARLES PERCY,
Chairman, Senate Foreign Relations Committee, U.S. Senate.

DEAR MR. CHAIRMAN: I want to reiterate this Administration's strong interest in prompt and favorable Senate consideration of the four Pacific Islands Treaties that are once again before the Committee. The four treaties, the Treaty of Friendship with Kiribati, the Treaty of Friendship with Tuvalu, the Treaty with the Cook Islands on Friendship and Delimitation of the Maritime Boundary, and the Treaty with New Zealand on the Delimitation of the Maritime Boundary between the United States and Tokelau, are very important to our interests in the Pacific. Our continued failure to act on these treaties has not only weakened our credibility with the Pacific Islands states, but has strained our relations with our ANZUS allies as well.

The treaties serve several U.S. interests in the region. Important lines of communication to our Australian and New Zealand allies and onward to the Indian Ocean pass through this vast ocean area. The security of these routes depends on the continued pro-Western orien-

tation of the newly independent Island states and on their continued cooperation with the ANZUS alliance.

The treaties will advance U.S. security interests in this vital region. After a thorough review, the Department of The Defense and the Joint Chiefs of Staff determined that the U.S. has no future military requirement for facilities of any kind on any of the islands concerned. We do have an interest, however, in ensuring that this region remains free of Soviet influence. The treaties provide us assurances that the islands will not be made available for possible military use by other powers. In the treaties with Kiribati and Tuvalu, these governments undertake to consult with us on security matters and specifically on any possible future military use of their islands. The Cook Islands and Tokelau, because of their ties with New Zealand, are covered by the ANZUS alliance.

These agreements benefit the U.S. fishing industry. The treaties with both Kiribati and Tuvalu commit those governments to consult with us on matters of mutual interest relating to the conservation, development, utilization and exploitation of fisheries resources. A provision in the treaty with Tuvalu and an exchange of letters accompanying the treaties with the Cook Islands, New Zealand, and Kiribati assures nondiscriminatory access for U.S. fishing vessels and for non-U.S. vessels supplying the canneries of American Samoa, a matter of considerable importance to the economy of that island.

The treaties are also of great value to American Samoa because they establish the maritime boundaries delineating that territory from the Cook Islands and from Tokelau. The U.S. claim to Swains Island, annexed to American Samoa in 1925, is also formally recognized in the agreement with New Zealand on behalf of Tokelau.

The claims to the twenty-five islands in question, which we are relinquishing in these treaties, have little, if any, legal basis or practical value. They were belatedly asserted just prior to World War II, were immediately rejected by Great Britain, and are not recognized by any other state. (During World War II and in the post war period, we made special agreements with Great Britain permitting us to use some of the islands in question.) The principal basis for our claims were activities undertaken pursuant to the Guano Act of 1856. It is clear that this Act was never intended to serve as a basis for the extension of U.S. sovereignty over islands from which Guano was taken. Certain of the islands were claimed on the basis of discovery or mapping by U.S. vessels in the mid-19th century. However, the United States made no attempt to extend its governmental jurisdiction over any of these islands. Unlike territories of the United States, they were not incorporated by act of Congress. They were never administered as part of the United States. What the treaties surrender are substantiated claims, not territory of the United States.

On the question of seabed minerals, because data on mineral deposits is imperfect, we cannot rule out the possibility that such deposits may exist in the vicinity of the treaty islands. It may, in fact, be many years before we know the extent of such resources and whether or not they are economically exploitable. However, as a practical matter, companies risking capital on expensive seabed mining operations would prefer to do so in areas where they can be assured that their

mining rights are not open to serious legal challenges. Maintenance of our weak and disputed claims to the treaty islands is unlikely to facilitate mineral exploitation by U.S. firms. It could, in fact, impede exploitation. Removal of our claims, the major irritant in our relations with these small islands states, will improve the business climate for U.S. firms interested in mineral extraction. By reason of both geography and technology, the island states are likely to turn to the United States for assistance in this field.

There is no region of the world where the United States enjoys more friendly relations than with the Pacific Islands countries. People of this region continue to hold vivid memories of our sacrifices in their defense during World War II, and each of these nations has worked closely with the United States in a variety of regional and international organizations. Most, for instance, have asked for and have received Peace Corps volunteers. The island nations of the Pacific also have close, cooperative ties with our allies—Australia, New Zealand, and Great Britain.

All of the island countries, and not just the parties to these agreements, view these four treaties as an important indication of how the United States intends to conduct its relations with them.

Our Australian and New Zealand allies share the view that the approval of these treaties is important to the protection of our mutual security and political interest in the Pacific region. Prime Minister Muldoon of New Zealand and other representatives of his government have repeatedly urged ratification of all four treaties. The Australian Government has likewise called on us to do the same and Australian Foreign Minister Street recently restated his government's position in the strongest terms in conversations with the Vice President, Secretary Shultz and NSC Director Clark. Our four Ambassadors in the area, Monroe Browne in New Zealand, Robert Nesen in Australia, Fred Eckert in Fiji and Virginia Schafer in Papua New Guinea, have also written to encourage prompt acceptance of the treaties. I have enclosed a copy of the Ambassadors' letter.

The four treaties in question were voted out by the Senate Foreign Relations Committee were over a year ago. As you know, they have not yet been brought to the floor for a vote. The Administration is hopeful that the Committee will act promptly to return the treaties to the executive calendar to secure final consideration by the Senate.

Sincerely,

POWELL A. MOORE,
Assistant Secretary for Congressional Relations.

SUVA, FIJI, *November 19, 1982.*

HON. GEORGE P. SCHULTZ,
Secretary of State.

DEAR MR. SECRETARY: We have just completed a two-day meeting of the region's Chiefs of Mission and feel that we should raise personally with you a problem that could seriously trouble our relations with the South Pacific countries.

In 1979–1980 the United States signed a series of four treaties with Kiribati, Tuvalu, the Cook Islands, and New Zealand (on behalf of Tokelau) which formally relinquished antiquated U.S. claims to a number of small islands in the central South Pacific. The treaties were submitted to the Senate for consideration promptly after their sign-

ing and in May 1982 were favorably reported by the Senate Foreign Relations Committee. But full Senate consideration of these treaties keeps getting postponed. We are aware that a few Senators have placed a hold on the treaties, but no reasons for objection have been stated.

In our view, this unexplained delay has caused the United States and President Reagan, who supports the treaties, considerable embarrassment in the South Pacific. If the impasse is not resolved quickly, the Senate's failure to act could have serious consequences for our relations not only with the Pacific island countries involved. but also with New Zealand, which has a direct interest in the matter.

We urge you to raise the matter directly with the Senate leadership and to seek its cooperation in having the treaties brought to a prompt vote.

We are deeply concerned that further delay in consideration of these innocuous treaties will injure our relations in the region.

Should you find it useful to do so, please do not hesitate to share this letter with the Senate leadership.

Respectfully,

H. MONROE BROWNE,
Ambassador to New Zealand.
FRED J. ECKERT,
Ambassador to Fiji.
ROBERT D. NESEN,
Ambassador to Australia.
M. VIRGINIA SCHAFER,
Ambassador to Papua New Guinea.

PREPARED STATEMENT OF THE SOCIETY FOR THE PROTECTION OF AMERICAN SOVEREIGNTY, ALEXANDRIA, VA.

Mr. Chairman, Members of the Committee: I am pleased to submit an additional statement in opposition of these four giveaway treaties, i.e., EX. W, 96–1; EX. A, 96–2; EX. P, 96–2; and Treaty Doc. 97–5.

The Society for the Protection of American Sovereighty takes exception to both the State Department's comments on Mr. Seidenberg's responses to additional questions submitted for the record (88–730 0) and the State Department's background memorandum (Subject: Legal Issues Related to the Pacific Island Treaties (MM–97–267, dated: 18 November 1981)). These two documents were written by Terence Fortune, Assistant Legal Adviser for East Asia, Department of State and were almost totally erroneous.

First we again submit for the record copies of the following:

1. Prepared statement of Mark J. Seidenberg.
2. Mark J. Seidenberg's responses to additional questions submitted for the record.
3. Prepared statement of Hon. Robert K. Dornan.
4. Prepared statement of Hon. William E. Dannemeyer.

In the interest of brevity we will give two examples of the State Department's, i.e., Mr. Fortune's, errors.

Mr. Fortune asseverated on page 10 of the above stated *background memorandum* that a "guano bond was subsequently filed for Hull in 1859 or 1860." This statement is totally erroneous. No bond was ever

filed for Hull atoll. Mr. Fortune stated that "Christmas Island was originally discovered by Captain Cook in 1777." This statement is also totally erroneous. Christmas Island was discovered in 1537 by Hernando de Grijaiva's crew and not in 1777 as Mr. Fortune would like this committee to believe.

Thank you for the opportunity to submit for the record this statement. I will be pleased to answer any additional questions.

Prepared Statement of Mark Jerome Seidenberg

Mr. Chairman and Members of the Subcommittee on East Asian and Pacific Affairs: My name is Mark Jerome Seidenberg, President, Society for the Protection of American Sovereignty. The Society for the Protection of American Sovereignty has been asked to present its views on Executive W (96th Congress, 1st Session), an inchoate treaty, "Treaty of Friendship with Tuvalu"; Execcutive A (96th Congress 2nd Session); an inchoate treaty "Treaty of Friendship with the Republic of Kiribati"; Executive P (96th Congress, 2nd Session), inchoate treaty, "Treaty with New Zealand on the Delimitation of Delimitation of the Maritime Boundary", and Treaty Doc. 97–5, an inchoate treaty, "Treaty with New Zealand on the Delimitation of the Maritime Boundary Between the United States of Aemrica and Tokelau."

The essence of these treaties are to cede 26 U.S. sovereign Pacific Atolls,[1] without the approval of the House of Representatives as required by Art. IV, Sec. 3, Cl. 2, of the U.S. Constitution.[2] Each of these strategically located atolls has an economic zone with a radius of 200 miles,[3] totaling almost four million square miles of ocean, rich in tuna (canning tune from these fishing grounds is the only major industry in American Samoa) and bulbous nodules accreted with manganese (assaying as high as 80 percent manganese dioxide),[4] copper, nickel, cobalt zinc and molybdenum.

It is the view of the Society for the Protection of Aemircan Sovereignty that these four giveaway treaties will erode American influence in the face of a growing Soviet presence in the South Pacific and would irretrievably injure the fishing industry of American

[1] Islands to Tuvalu: Funafuti, Ninlakita, Nukufetau, and Nukulaelae, Islands to Kiribati: Canton, Enderbury, Hull, Birnie, Gardner, Phoenix, Sydney, McKean, Christmas, Caro ine, Starbuck Malden, Flint, and Vostok. Islands to the Cook Islands: Pukapuka, Manikiki, Nassau, Rakahauga, and Penrhyn, Islands to New Zealand: Atafu, Nukononu, and Fafaofa.

[2] Hearings before the Committee on Merchant Marine & Fisheries, House of Representatives, 95th Congress, 2nd Session, Serial No. 95–32, "Power of Congress to Dispose of U.S. Property."

[3] While the United States does not at present "officially" recognize a 200 mile exclusive economic zone around said 26 atolls (Fishery Conservation and Management Act of 1976), the governments of Tuvalu. Kiribati, Cook Islands, and New Zealand claims a 200 mile exclusive economic zone around their territories (a fortiori, their claims to a 200 mile exclusive economic zone will be extended around said 26 atolls (noting the exceptions in Article III of Executive P, 96th Congress, 2nd Session and Article III of Treaty Doc. No. 97–5), if these inchoate treaties are ratified).

Note.—The State Department informed the Coordinating Committee for Joint Off-Shore Prospecting for Sea-bed minerals in the South Pacific (COOP/SOPAC), body to which the aforesaid "Oceanica" (a la mode de Orwell's *1984*) government are members (COOP/SOPAC is under the auspices of the United Nations Economic and Social Commission for Asia and the Pacific), that it would not "'contest" the 200 mile exclusive economic zone claimed by the COOP/SOPAC members (source was a statment by the Rt. Hon. D. S. Thomson, Acting Minister of Foreign Affairs of New Zealand, dated: 19 June 1981 and Pacific Islands Monthly—August, 1981, p. 5).

[4] Manganese metal is an important resource for the manufacture of all steels. According to the Bureau of Mines, U.S. Department of the Interior, 98 percent of the apparent consumption of manganese in the United States are imports (mainly from Gabon, Brazil, and South Africa).

Samoa. Therefore, the Society for the Protection of American Sovereignty *opposes* Executive W (96th Congress, 1st Session), Executive A (96th Congress, 2nd Session), and Treaty Document No. 97–5.

TREATY OF FRIENDSHIP WITH TUVALU, EXECUTIVE W (96TH CONGRESS 1ST SESSION)

This inchoate treaty, as presently written, would cede to the Government of Tuvalu four atolls under actual U.S. Sovereignty since the early 1800's, i.e., Funfuti Atoll, Nukufetau Atoll, and the islands known as Nukulaelae (or Nukulailai), and Nuilakita (or Narakita).

It appears that former Secretary of State Cyrus Vance was not properly briefed on the history of these U.S. Sovereign South Pacafic atolls, when he obfuscated their historic connection with the rest of the United States in his following statements:

> The islands were discovered in March 1819, by an American merchant vessel. During 1940–41 the four islands were mapped by the United States exploration expedition under Commander Charles Wilkes, United States Navy. The United States first formally declared sovereignty over the islands in 1939. During World War II the United States built and manned military bases in Funafuti and Nukufetau, but these were abandoned after the War, and the United States established no other presence on the islands.[5]
>
> The United States took no action to dispute the British claim for almost a half century following the 1892 British proclamation of protectorate status for the Ellice Islands. To our knowledge the only resource in the area are the fisheries located off shore.[6]

These statements by former Secretary of State Vance were not correct and needs clarification. The following facts will correct the errors stated by Vance in the aforementioned "Letter of Submittal."

Funafuti is a pear-shaped atoll enclosing a lagoon about 16 km long by 13 km wide at its widest part. There are about 30 islets on the reef. On the eastern (windward) side, the islets form an almost continuous line, but on the western side there are many gaps. Nukufetau is an oval-shaped atoll, about 38 km in circuit, with 37 islets on its reef. Nukulaelae is an atoll with about two dozen islets, of which the own largest are on the eastern side. The reef on the western side is largely submerged. Nuilakita is slightly higher than the other three atolls. It is about 5½ km in circumference and wooded with coconut palms. These four atolls were known by the American whalers in the 1800's as lying in the waters known as the "on-the-line-grounds." The main island, Funafuti, is 1200 km north of Suva.

The people of these atolls are of Polynesian origin (mostly arriving from other island groups after the 1860's). The pre-1800's Polynesian inhabitants were mostly kidnapped by Peruvian slavers in the years 1862–63. None returned.[7] But many now have some American blood,

[5] Cyrus Vance, Secretary of State, "Letter of Submittal," *Treaty of Friendship With Tuvalu*, Executive W (96th Congress, 1st Session), p. V.
[6] Same as footnote 5.
[7] Harry E. Maude. *Slavers in Paradise: The Peruvian Labour Trade in Polynesia, 1862–1863*. Stanford: Stanford University Press, 1981.

derived from the beachcombers and traders who settled in these atolls in the 19th century.

The first of these atolls became known to the western world was Nuilakita. This was sighted by Alvaro de Mendana during his (second) voyage from Tahuata to Ndeni on 29 August 1595.[8]

However, Mendana's discovery of "La Solitaria" (Niulakita) atoll had been forgotten by the time the American Captain George Barrett rediscovered "Rocky Island" (Niulakita) on 9 November 1921.[9]

According to the Calcutta Journal of 7 August 1819, the American Captain Arent Schuyler de Peyster (master of the British Brigantine *Rebecca*) discovered Funafuti (Ellice's Group) on 17 and 18 May 1819, respectively, while on a voyage from Taiohoe to Calcutta.[10]

Captain George Barrett of the Nantucket Whaler *Independent II*, discovered Nukulaelae (Mitchell Group) and (re-)discovered Niulakita (a.k.a. Rocky, Independence and Sophia).[11]

Between 1821 and 1870 the "on-the-line-grounds" were frequently visited by American whalers. Seamen from these American ships occasionally deserted and became beachcombers and traders or agents for firms in the United States.[12]

Niulakita atoll, the highest of these four islands, has a historic American connection similar to the other 3 atolls. Because of space considerations in the statement, I will limit my discussion to Niulakita atoll as an example of the American claims to the entire group covered by this inchoate treaty.

The American trader Harry Jay Moors [13] acquired Niulakita (then called Sophia) atoll late in the 19th century. He exploited the island for copra and its quano deposits. Moors recorded this title to Sophia atoll with the U.S. Consular Court at Apia, Samoa. His daughter Sophia was born on the island.

Moors sold his two-thirds interest in Niulakita to the Somoa Shipping and Trading Company for £1.500 on 27 January 1914. As it was then mortgaged to W.H. and A.G. Friend of Sydney for £12,000 it was simultaneously reconveyed to Moors for £1,500. On 30 November 1926

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[8] Sir Clements Markham. *The Voyages of Pedro Fernandez de Quiros, 1595–1606*. 2 Vols. Hakluyt Society, Series II, Nos. 14–15. (London: The Hakluyt Society, 1904). Vol. I (No. 14), pp. 31–32.

[9] *Salem Courier*, 18 March 1829.

[10] *Calcutta Journal*, 7 August 1819. Secretary Vance errored when he asseverated that all four atolls "were discovered in March 1819, by an American merchant vessel". On 25 February 1979, Richard Holbrooke (Bureau of East Asian and Pacific Affairs, Department of State) wrote the Hon. Henry Waxman, M.C. (24th District, California) on the subject of the Tuvalu Treaty. Holbrooke at that time asserted that Captain De Peyster (sic) of the American (sic) ship *Rebecca* discovered all four atolls in 1919 (sic). It is therefore very clear that the Department of State does not know who discovered these four atolls and wants to obfuscate American historical sovereignty over these islands in a "memory hole" (a la Orwell's *1984*).

[11] *Salem Courier*, 18 March 1829.

[12] Edouard A. Stackpole. *The Sea-Hunters* (Philadelphia: J. B. Lippincott. 1953).

[13] Harry Jay Moors was born in Detroit, Michigan in 1854. His family moved to San Francisco where he graduated from high school in 1870. In 1875 he visited Samoa and went to work for the Hawaiian Government as an agent of the Hawaiian Board of Immigration (H.B.I. Overseas agents had extrateritorial powers in the independent atolls of Oceanica to enforce the anti-Blackbirding laws of Kingdom of Hawaii), in the Gilbert and Wallis Islands. In Wallis he had an affair with the king's daughter which begot a son named Kane. Early in the 1880's Moors moved to Apia and had an affair with Epenesa Enari and sired his second son called Mark. On 10 July 1883, Harry Moors married Fa'animonimo (Nimo) Asiono, of Tanugamanono, before the United States Consular Court at Apia (a court of Record of the United States). Moors had six children with "Nimo" (Daniel Walker [died as infant in 1887], Ramona [Mirada], Rosabel [Nelson], Sophia [Hellesol], Priscilla [Cathuthers-Hetherington], and Harry Jr. [Afoafouvale Misimoa]).

Harry Moors recorded all eight of his children's births with the U.S. Consulate at Apia and sent them to the United States for their education (this protected his grandchildren's rights to United States citizenship).

Moors passed on 13 March 1926. His wife "Nimo" died in 1932.

the Official Liquidator of the Samoa Shipping and Trading Company conveyed said two-thirds interest to Burno Philip for £1,200.[14] During World War II Burno Philip sold its two-thirds interest to the Western Pacific High Commission on behalf of the Ellice islanders. Therefore, one-third interest in Niulakita is presently owned by American citizens.

The present government of Tuvalu does not recognize the one-third interest of these United States citizens in Niulakita atoll. If the treaty takes force a few U.S. citizens shall suffer dimunition of their rights and privileges to the one-third interest in real property on Niulakita atoll.[15]

The legal status of the other three atolls are that its fee belongs to the United States and their autochthonal polynesian population has only a mere rights of occupancy.[16]

During World War II the United States built and manned military bases on Nukufetau and Funafuti, Secretary of State Vance errored when he stated these two United States military bases "were abandoned after the War." I know of no act on the part of the U.S. Government to abandon its bases on Funafuti and Nakufetau. The fact that after World War II the U.S. Government did not have to man these bases, does not show in a legal sense the abandonment of the U.S. rights to these bases.

Vance errored when he stated the U.S. took almost a half century following the 1892 British proclamation of protectorate to dispute the British claims.[17] The U.S. Government protested the British proclamation as early as 1892, i.e., not a half century later.[18]

TREATY OF FRIENDSHIP WITH THE REPUBLIC OF KIRIBATI, EXECUTIVE A (96TH CONGRESS, 2D SESSION)

This inchoate treaty, as presently written, would cede to the Government of the Republic of Kiribati 14 atolls under actual U.S. sovereignty since the mid-1800's, i.e., Birnie, Canton, Caroline, Christmas, Enderbury, Flint, Gardner, Hull, McKean, Maldin, Phoenix, Starbuck, Sydney and Vostok.

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[14] Copies of the bills of sales should be resolved in the British Consulate, Apia, Post Records, 1847–1912, now in Wellington at the National Archives and available on microfilm (78 reels), or in the case of 1926 conveyance in the Western Pacific High Commission. Archives, now at the Foreign Office in London. The latter should also be available on microfilm.

[15] In light of U.S. Law.

[16] Cf. *Federal Power Commission vs. Tusarora Indian Nation,* 362 U.S. 99 (1960), and *Johnson* vs. *McIntosh,* 8 Wheat. (21 U.S.) 543 (1923).

[17] In the Holbrooke letter (see footnote #10) the State Department errored when he said, "The first recorded British claim to the islands was by Captain Davis of the H.M.S. *Royalist,* who proclaimed a protectorate over the island (sic) in 1892." However, according to the *New York Herald* of 3 September 1892, Captain Edward H. M. Davis of the H.M.S. screw cruiser *Royalist* proclaimed a protectorate only over the Gilbert Islands, while at Apamana on 27 May 1892.

It is therefore very clear that at the time this treaty was being negotiated (between September 1978 and February 1979) the State Department did not have the facts straight as to the origin of the alleged "British Claims" to these four atolls.

Captain H.W.S. Gibson of the H.M.S. *Curacao* went to these four islands in 1892 and proclaimed a British protectorate over them. At Niulakita for example, Captain Gibson had a member of crew tear down the stars and stripes (U.S. Flag) off the island's flagpole (over the protests of H. Moors' employees) and replace it with the Union Jack (British flag). These British claims of protection were fifty-two years too late, i.e., these islands because U.S. territory in 1840 by discovery and occupation (the U.S. Exploring Expedition under the command of Lt. Charles Wilkes U.S.M. completed said occupation for the U.S. Government in 1840). See: *Jones* vs. *United States,* 137 U.S. 202, 212 (1890), when the Supreme Court said: "By the law of nations recognized by all civilized States, dominion of new territory may be acquired by discovery and occupation, as well as by cession and conquest."

[18] *New York Herald* of 3 September 1892.

It appears that former Secretary of State Cyrus Vance was not properly briefed, on the history of these U.S. Sovereign South Pacific atolls, when he obfuscated their historic connection with the rest of the United States in his following statement:

> The British originally asserted sovereignty to these islands at the end of the 19th century . . . The United States did nothing to contest British sovereignty until 1939. That year the United States, in a diplomatic note to the United Kingdom, formally asserted a claim to the 14 islands in the Phoenix and Line Island groups and 11 other South Pacific islands.[19]

These statements by former Secretary of State Vance were not correct and needs clarification. The following facts will correct the errors in fact stated by Vance in the aforesaid "Letter of Submittal."

The Phoenix islands comprises eight scattered atolls lying between 2 deg. 30 min. and 4 deg. 30 min. S. lat. and between 170 deg. 30 min. and 174 deg. 30 min. W. long. The islands are Canton, Enderbury,[20] McKean,[21] Birnie,[22] Phoenix,[23] Gardner,[24] Hull,[25] and Sydney.[26] The remaining six islands are located in the Line group and comprise of the following atolls: Caroline,[27] Christmas, Flint,[28] Maldin,[29] Star-

[19] Cyrus Vance, Secretary of State, "Letter of Submittal" (17 December 1979), *Treaty of Friendship With the Republic of Kiribati*, Executive A (96th Congress, 2nd Session), p. V.

[20] Enderbury Island lies about 60 km. ESE of Canton Island. It is about 4¼ km. long by 1½ km. wide. The lagoon that once existed is now only a shallow puddle. The island was first surveyed by the United States Exploring Expedition in 1840 and 1841.

The Phoenix Guano Company, an American concern, worked the island's guano deposits between 1859 and 1877.

On 3 March 1938, President Franklin D. Roosevelt issued Executive Order 7828 which placed Enderbury atoll under the control and jurisdiction of the U.S. Secretary of the Interior. In April, 1939 the island was placed under joint British and American control. On 12 July 1979, said joint control ended and its sole control reverted back to the Interior Department.

[21] McKean atoll is almost circular with a diameter of little more than 1 km. It has a shallow lagoon. The island was named for a member of the United States Exploring Expedition who was the first to sight it during a survey in 1840 for the U.S. Navy's Depot of Charts and Instruments (under Congressional authority). The island has not been occupied since American guano interests ceased operations there about 1871.

[22] Birnie is the smallest of the Phoenix group, being only about 1¼ km. long and 500 metres wide and enclosing a salt water lagoon.

[23] Phoenix atoll is a pear-shaped island less than 1¼ km long and 1 km wide. A plateau at one end of the island, about six metres above sea level, slopes away to a shallow lagoon. The island is uninhabited and is overrun with rabbits. There are also many thousands of sea birds.

[24] Gardner atoll is about 6½ km by 2 km, enclosing an ample lagoon. The width of the land varies from about 100 metres on the east and northeast side to about 1 km on the west. There are two narrow passages into the lagoon. The island has a brown, peat-like soil that is very fertile. Pisonia grandis and cordia subcordata grow prolifically there.

[25] Hull atoll lies eastward of Gardner and is about 11 km long by 5 km wide. There are numerous small islets on the reef and many entrances into the big lagoon.

Stone structures found on the island in 1933 indicate that it was inhabited long before it was discovered by Lt. Charles Wilkes of the United States Exploring Expedition in 1840. Wilkes named the atoll after Capt. Isaac Hull, U.S.N., commander of the *Constitution* ("Old Ironsides" during the War of 1812). Hull was the only one of Phoenix Islands that was still inhabited when the U.S. Exploring Expedition first charted the Phoenix Islands in 1840 (over 90 percent of these inhabitants were nationals of Tahiti).

[26] Sydney atoll is roughly circular in shape enclosing a land-locked lagoon. It measures about 3¼ km from west to east and 2½ km from north to south.

[27] Caroline atoll measures about 10 km north and south by about 1 km wide. There are over 20 islets strung along the reef enclosing a shallow lagoon, which is closed against anything larger than a ship's boat. Some of the islets are 4½ to 6 metres high, and most are covered with coconut palms, pandanus and similar growth.

[28] Flint Island is situated in 11 deg. 25 min. S. lat. and 151 deg. 48 min. W. long. It is about 5 km long by one broad, flat and with a maximum height of about 7½ metres. It is well-wooded.

A vessel of the U.S. Exploring Expedition surveyed it in 1841.

[29] Malden Island lies about 386 km south of the equator in 155 deg. W. long. It is flat and triangular, on a reef measuring about 6½ km by eight and enclosing a large lagoon.

Stone-faced platforms, graves and maraes found on Malden indicate that Polynesians lived there for several generations before it was discovered by Lord Byron of the HMS frigate *Blonde* (At the time the *Blonde* was in the service of the Kingdom of Hawaii), who came upon it in 1825, and named it for the frigate's surveying officer, Lt. Charles Malden. It was then uninhibited. K. P. Emory, of the Bishop Museum of Honolulu, estimated in 1924 that the population in pre-contact times must have reached from 100 to 200. The occupation of the island was known in tradition to the people of Manihiki atoll.

Secretary of Interior James Watt is the "federal land manager" of these maraes (religious temples), under the terms of the "Archaeological Resources Protection Act" of 1979,

buck [30] and Vostok.[31] The Line Islands begin about 1,500 kilometres south of the Hawaiian group and run in a string of low atolls in a SSE direction towards Tuamotu Archipelago.

Because of space considerations in this statement, I will limit my discussion to Canton and Christmas atolls as an example of the American claims to those 14 atolls of American Polynesia.

Canton is the largest of the Phoenix Islands, tapering from a width of four and a half miles on the west side to the southwest point, about ten miles distant. It lies 190 miles south of the equator. It is placed strategically from the standpoint of airplane travel, for it is 1,630 nautical miles from Honolulu. Consequently, it is one of the most important bases in the Central Pacific area.

Canton was discovered independently by several American whalers. It is not known which one reached the atoll first, for each whaler gave it a different name. It became known prior to 1828, because the Secretary of the U.S. Navy published a list in 1828 showing the location of the atoll.

Canton (Mary's) was first occupied by the crew of the New Bedford whaler *Canton* on 4 March 1854. These thirty-two men were the first known occupants of the island and they were all citizens of the United States. Captain Andrew J. Wing (master of the *Canton*) during his stay at Canton took possession of that atoll for the United States.

In May 1854, Captain Wing informed the Spanish Governor at Tinean of his activities at Canton. He also informed the British authorities at Hong Kong in August 1854 of these same activities.[32]

In March 1872, Commander Richard W. Meade, U.S. Navy, of the U.S. *Narragansett* made the first survey of Canton atoll for the Hydrographic Office to the U.S. Navy's Bureau of Navigation.[33] Meade named the atoll Canton Island and its lagoon Wing's Lagoon in honor of these first occupants of the atoll for their service to the United States.

On 3 March 1938, President Franklin D. Roosevelt issued Executive Order 7828 which placed Canton atoll under the control and jurisdiction of the U.S. Secretary of the Interior. Based on that E.O., the U.S. Coast Guard Cutter *Roger B. Taney* landed an American party consisting of four "colonists"on Canton atoll at 9 a.m., 7 March 1938,

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93 Stat. L. 721 et seq. The only people that I know who consider these maraes as having "religious or cultural importance" are living on the Island of Ra'ivavae which lies about 155 km ESE of Tubuai (Austral Islands). Their oral history talks about their "ariol" (Religious societies) on Malden as the descendants of Gods. King Pomare II of Taihiti visited Ra'ivavae Island by the ship *Arab* in 1819 and the islands chiefs formally ceded the government to him. M. Rudolf Bambzridge, B.P. 517. Papeete. Tahiti is the attorney of the Taihiti Royal Family (also a member) and should be contacted for the views of the Roval Family over the future status of Malden and Hull Islands.

In 1962 the U.S. Government used Malden for its H-Bomb tests.

[30] Starbuck atoll lies about 540 km south of the equator and 174 km SSW of Malden Island in 155 deg. W. long. It is barely 4½ metres high at its highest point, 10 km long and about 3 km wide. It is barren and treeless, with a shallow lagoon.

It was discovered in 1823 by Captain Obed Starbuck of the U.S. whaler *Hero*.

[31] Vostok atoll is a low, uninhabited, trangular coral island less than 2 km square. A central clump of puka trees, about 25 metres high, is its principal feature. At the southwest corner is a boat passage through the reef.

The Russian explorer Bellingshausen discovered it in 1820 and named it after his ship.

[32] P. J. Searles, "Canton to Guam", *The Guam Recorder* (9 December 1938), p. 9.

[33] Commander Richard W. Meade was not aware of the reorganization plan of the Hydrographic Office, dated 21 January 1871. This plan created the title "Hydrographer to the Bureau of Navigation" for the officer in charge and defined his duties. It divided the Office into five sections, as follows: No. 1, department of archives; No. 2, charts department; No. 3, meteorological department; No. 4, drafting and engraving department; No. 5, instrument department, and a library.

Meade, in his notes, still made reference to the Depot of Charts and Instruments which became part of the Hydrographic Office on 1 August 1866, when Commander T. S. Fillebrown was detached from the Naval Observatory, where he had charge of the preparation of charts, etc., and was appointed Hydrographer of the newly created Hydrographic Office.

to re-occupy the atoll for these United States which began on 4 March 1854.[34]

By an Official Exchange of Notes between His Majesty's Government in the United Kingdom and the United States Government regarding the Administration of islands of Canton and Enderbury (Washington, 6 April 1939, Treaty series No. 21, 1939. London, His Majesty's Stationary Office, 6 pp.), the atoll was placed under joint British and American control for fifty years and "thereafter until such time as it may be modified or terminated by mutual consent."

In 1940, Pan American established a station on the island and in July of that year the company's station manager was designated the Department of Interior's representative. With the outbreak of World War II, air service was discontinued, civilian residents were evacuated, and the United States armed forces occupied the island.

Soon after the war, the Civil Aeronautics Administration (now the Federal Aviation Administration) sent representatives to Canton, and in 1946, the senior CAA employee on the island was designated as field representative of the Department of the Interior.

In 1965, the National Aeronautics and Space Administration (NASA) became the dominant user of the island and was designated the administering agency by the Secretary of the Interior. NASA operated a satellite tracking station on the island and provided operations support for the Weather Bureau and the FAA. In June 1967, NASA announced its decision to withdraw.[35] By a Special Order of the AFC [36] Commander effective 1 November 1970 the Canton Auxiliary Airfield was created which included the islands of Canton, Enderbury, Hull, Birnie, Sydney, and Gardner. The Canton Auxiliary Airfiield was placed under the control of SAMTEC [37] (ADSC) out of Vanderberg AFB, CA.

By annex 2 of FO 4701–74–C–0116 (P00063) a modified contract between SAMSO and Global Associates (a contractor of SAMTEC out of Vandenberg AFB), Global Associates became responsible for the Canton Auxiliary Airfield on 1 January 1979.

Early in 1979, at a meeting in Suva, Fiji, the United Kingdom informed the United States that the agreement on the Administration of the islands of Canton and Enderbury would be terminated effective 12 July 1979 (the date the United Kingdom gave independence to the Gilbert Islands Colony). The State Department informed the British side that it could not terminate the agreement unilaterally, but in light of Kiribati independence the Department would declare that agreement obsolete at midnight, 11 July 1979.

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[34] In 1889, the H.M.S. *Egeria* went to the Phoenix Islands to make surveys for the British Government. During her stay, Commander Oldham, RN, Captain of the *Egeria*, placed Phoenix, Birnie, Sydney, and Hull atolls under so-called "British protection". At the same time he made a survey of Canton atoll (See: J. J. Lister "Notes on the birds of the Phoenix Islands", *Proceedings* [Zoological Society of London, 1891], p. 289–300), but would not place it under British protection because he knew it was owned by an American citizen. Captain Gibson, of the H.M.S. *Curacoa* went to Gardner atoll in 1892 and issued a proclamation purporting to "annex it for the British Government". At that so-called "annexation" ceremony, Captain Gibson, RN, also acknowledged that Canton atoll was owned by an American citizen. A foriori, both Captains Gibson and Oldham acknowledged that Canton atoll was United States territory.

[35] U.S. Department of the Interior, Office of the Secretary, *Territorial Areas Administered by the United States* INT–418 (GPO: Washington).

[36] Air Force Systems Command.

[37] The so-called "second agreement" of 1970 to pay the United Kingdom annually for ten years was not an international agreement in the legal sense (NOTE: R. Roger Majak, *International Agreements: An Analysis of Executive Regulations and Practices* (95th Congress, 1st Session, Washington: GPO, 1977).

It should be noted that the so-called "decision" of the Department of Defense of 19 March 1979, was not voluntary. Ieremia Tabai (President of Kiribati) announced in early 1979: "If the 'Russians' come (to the Gilberts) we would talk to them and not send them away." Ieremia informed the United States and British delegates that his Government would not permit a U.S. Air Force Base in Canton after independence (without the payment of rent). The State Department informed Mr. Walter Slocombe (Assistant Secretary of Defense) that the 1970 arrangement [37] with the United Kingdom would become obsolete upon independence of Kiribati and the Air Force would have to leave Phoenix Islands.

On or about 8 May 1979, Mr. Morena, Vice President of Contracts, Global Associates, was informed by Mr. E. R. Ewen, SAMSO (AFSC) of Vandenberg AFB that Global Associates must leave Canton Island by midnight 11 July 1979.

On 3 July 1979, Secretary of the Interior Ceil D. Andrus sent a letter to Secretary of Defense Harold Brown informing him of a meeting between Peter Tali Coleman [38] (Governor of American Samoa), Miss Margaret Ann Roche (Samoan Desk, Office of Territorial Affairs, Department of the Interior) and Walter Slocombe (Assistant Secretary of Defense). It was noted at that meeting that Governor Coleman would become the representative of the Secretary of the Interior and the Civil Administrator for Canton and Enderbury Islands based on the authority vested in the Secretary of the Interior by E.O. 7828. Secretary Andrus on 3 July 1979, also sent a letter to Governor Coleman that appointed him the civil administrator of Canton and Enderbury Islands, effective at midnight, 11 July 1979. This left Hull, Birnie, Sydney, and Gardner atolls (part of the Canton Auxiliary Airfiield complex). Still within the jurisdiction, control and accountability of SAMTEC, Vandenberg AFB, CA.

On 13 September 1979 a Special Order (G–142) was issued by James L. Wyatt, Jr., Lt. Col., U.S.A.F. for the Commander of the AFSC. This order confirms the verbal orders of General Anton Slay of 22 June 1979, which purported the disposal of the Canton Auxiliary Airfield (PI DATB), effective 12 July 1979 (based on some alleged authority in AFR 87–5). This order caused these remaining four atolls to become within the jurisdiction, control and accountability of Air Force Systems Command directly. Global Associates' contract was terminated on 30 September 1979.

Governor Coleman has appointed an American Samoan to live on Canton as field representative of the Department of the Interior.[39]

Christmas Island (largest coral atoll in the world, with an area of 2334 square miles—over 10 times the size of Manhattan Island in New York (City) resembles a chop in shape. It stretches from NW to SE. The largest portion is in the NW and encloses a spacious lagoon. The interior of the land area is dotted with more than 100 lakes. It lies at about 1 deg. 59 min. N. lat. and 157 deg. 30 min. W. long.

Pre-contract Polynesian artifacts of different periods and a number of stone structures have been found on the island. The island was

[38] My family has been good friends with Peter Coleman's family since 1937, i.e., ever since my uncle gave William Coleman (Peter Coleman's older brother) a job with Associate Motoro (459 South Beretania Street, Honolulu, Hawaii), 44 years ago.

[39] Governor Coleman has also given me written permission to visit Canton atoll.

discovered in 1537, by Hernando de Grijalva's crew after they mutinied and killed him (Spanish discovery). But the island was named by Captain Cook on 25 December 1777.

It has been American-owned since 1825. The U.S. Government acquired sovereignty over Christmas in the following manner (and not in 1939 as the State Department wants people to believe):

> Captain John Stetson of New Haven, Connecticut, landed on Christmas Atoll from the American ship *Equator* on February 15, 1825. Finding it not occupied, he claimed the island for himself.
>
> By a quit-claim deed of assignment, dated May 11, 1857, John Stetson and his wife sold Christmas Atoll to Alfred G. Benson of Brooklyn, New York.
>
> On the same date, Alfred G. Benson empowered Capt. J. L. Pendleton, master of the ship *John Marshall*, of New York, to take possession of the island, which was accordingly done on the 20th of June, 1858, in the name of, and on behalf of, Benson and his associates, in full conformity with the Guano Island Act of August 16, 1856 (48 U.S.C. 1411–1419).
>
> By deed dated May 13, 1857, Alfred G. Benson granted George W. Benson of Brooklyn, all of his rights, title and interest therein.
>
> On November 24, 1859, George Benson deeded the United States Guano Co. of the city of New York all of his right, title and interest in said discoveries.
>
> On November 25, 1858 the above two Bensons and seven others organized the United States Guano Co. as a New York corporation, pursuant to and in conformity with the act of the Legislature of the state of New York passed on April 15, 1857, entitled: "An act to authorize the formation of corporations for the purpose of mining, importing guano and other fertilizers."
>
> The United States Guano Co. gave an approved bond in accordance with the requirements of the Guano Islands Act (48 U.S.C. 1411–1410), and U.S. Secretary of State Lewis Case issued a certificate to the company for Christmas Atoll on December 29, 1859.
>
> On July 20, 1872, U.S. Navy Cmdr. Richard W. Meade, of the USS *Narragansett*, formally annexed Christmas Atoll for the government of the United States of America.
>
> Great Britain tacitly admitted United States sovereignty to Christmas Atoll in correspondence with the United States State Department as early as 1872.
>
> Ever since the United States government formally annexed Christmas Atoll on July 20, 1872, it has been constantly publishing documents which have included Christmas Atoll as an island belonging to the United States.

Despite this and an American protest, Captain William Wiseman of the HMS *Caroline* went to Christmas in 1886 and issued a proclamation purporting to "annex it for the British Government".[40]

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[40] The British Government in the quarter of the 19th century issued proclamations purporting to "annex" other U.S. territorial islands as well.

NOTE.—Johnston Island was annexed by the United States Government in 1858 and purportedly "annexed" by the HMS *Champion* in 1892.

Baker Island was annexed by the United States Government in 1857 and was listed as a British possession in *British Possessions in Oceania*, No. 144 (London: Foreign Office, 1920), p. 16.

Jarvis Island was annexed by the U.S.S. *St. Mary* for the United States in 1858 and was purportedly "annexed" on June 3, 1889 by the HMS *Cormorant*. Howland Island was annexed by the United States Government in 1857 and was listed as a British possession in *The British Admiralty Sailing Directions, Pacific Islands*, Vol. II, 4th Ed., 1909, p. 196.

During World War II and the late 1950's the United States built and manned military bases on Christmas Atoll. In 1962 the U.S. used Christmas along with Malden for its H-Bomb test.

In 1890, the United States Supreme Court in the case of *Jones* v. *United States*, 137 U.S. 202, took the view that the United States acquired 13 of the 14 atolls (except Hull), covered by this inchoate treaty, under the Act of August 18, 1856 (11 State. L. 119), the so-called Guano Act, and that they were not within the lawful jurisdiction of any other government and under the sole jurisdiction of the United States.[41]

TREATY WITH THE COOK ISLANDS ON FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY, EXECUTIVE P (96TH CONGRESS, 2D SESSION)

This inchoate treaty, as presently written, would cede to the Cook Islands Government five atolls under actual U.S. Government, five atolls under actual U.S. Sovereignty since the mid 1800's, i.e., Manihiki, Nassau,[42] Penrhyn, Pukapuka (Danger) and Rakahanga, and a large portion of the fishery conservation zone of American Samoa.[43]

It appears that former acting Secretary of State Warren Christopher was not properly briefed on the history of these U.S. Sovereign South Pacific atolls, when he obfuscated their historic connection with the rest of the United States in his following statements:

> In connection with establishing the maritime boundary it was necessary to address and resolve the issue of the sovereignty over the islands of Pukapuka (Danger), Manihiki, Rakahanga, and Penrhyn. The U.S. claims to these particular islands arises out of occasional 19th century visits to the islands by American whalers, and by execution of guano bonds under the Guano Islands Act of 1856. The U.S. claim has virtually no legal merit and is not supported by any other nation. The United States has never exercised government jurisdiction over these islands.

Therefore, if one would take the State Department's hypothesis to its logical conclusion the rule of international law that "the first assertion of sovereignty must not be an usurpation of another's subsisting occupation nor contested from the first by competing acts of sovereignty." (State Department's own official "digest of International Law"), does not apply to the United Kingdom when they assert sovereignty. It also follows that if the U.S. Claim is "weak" to Christmas and the other atolls covered by this inchoate treaty, then the above four atolls are not safe from the I–Kiribati or British officialdom.

[41] Source: Circular No. 1 "Relative to the Guano Islands Appertaining to the United States" of Synoptical Series 1869, issued 12 February 1869 by Hugh McCulloch, U.S. Secretary of the Treasury.

Present name	Location	Former name as bonded
Birnie Atoll	Phoenix Islands	Bernie's.
Gardner Atoll	do	Gardner's.
McKean Atoll	do	McKean.
Phoenix Atoll	do	Phoenix.
Sydney Atoll	do	Sidney's Islands.
Canton Atoll	do	Mary's.
Enderbury Atoll	do	Enderbury.
Christmas Atoll	Line Islands	Christmas.
Caroline Atoll	do	Caroline.
Malden Island	do	Malden's.
Starbuck Island	do	Starbuck or Hero.
Flint Atoll	do	Flint.
Vostok Island	do	Staver's.

[42] Not stated in Article V of Executive P (96th Congress, 2d Session), but can be inferred by the maritime boundary coordinates stated in Article I.

[43] Created by Congress, pursuant to the Fishery Conservation and Management Act of 1976.

> These islands and these people have historically been an integral part of the Cook Islands. Continued assertion of these claims is inconsistent with the U.S. interest of maintaining friendly relation with the people of the South Pacific.

These statements by former Acting Secretary of State Christopher were not correct and needs clarification. The following facts will correct the errors in fact and conclusions of law stated Christopher in the aforesaid "Letter of Submittal." [44]

The Cook Islands did not exist as a political entity until 11 June 1901. Thus it is not appropriate to write that "(t)hese islands and people have historically been part of the Cook Islands."

Geographically these five atolls are part of the Humphrey Group. The group got its name from Captain Patrickson of the American whaler *Good Hope* in 1822, who named the archipelago Humphrey's.

Manihiki (Humphrey's) is a most beautiful coral atoll, with many inlets or motu, strung around the reef which fringes the lagoon. The total land area is about 140 hectares. Nassau is a coral outcrop of about 225 hectares, which has no lagoon, and is about 45 kilometers southeast of Pukapuka. Pukapuka (also known as Danger or Dangerous Islands) atoll, which has a surface area of about 45 hectares, lies about 1150 kilometers northwest of Rarotonga, and consist of three islets, each of which form the corners of the triangular-shaped lagoon. Rakahanga (Riersons) atoll has a land surface of 1085 hectares and lies about 1120 kilometres northwest of Rarotonga, and is unusual in that its shallow lagoon is almost land-locked. Penrhyn or Penchuyno (Tongareva) atoll encloses a lagoon of 280 square kilometres, making it one of the largest of all the lagoons in the Pacific, has a land area of 600 hectares, and lies 1170 kilometres northwest of Rarotonga.

The people of these atolls are of Polynesian origin closely related to the Manuans of American Samoa. The pre-1860's Polynesian inhabitants were mostly kidnaped by Peruvian slavers in the years 1862–63. Very few of them ever returned to these islands, because most of them died as slaves in Peru. The present population came mostly from other island groups after the 1860's. Many now have some American blood, derived from the traders and beachcombers who settled in these atolls during the nineteenth century. The Manuan connection is quite clear in light of the marked dialectic differences between the Maori language spoken in Lower Cook Group (Rarotongan) and the lingua franca spoken on Pukapuka and Nassau atolls (Manuan).

Pukapuka was the first of these atolls which became known to the western world. It was sighted by Alvaro de Mendana during his second voyage from Tahuata to Ndeni on 20 August 1595.[45] There are two major accounts of Mendana's discovery of "San Bernardo" (Pukapuka) atoll: a long narrative dictated by Pedro Fernandez de Quiros to his secretary, Belmonte Bermudez, and a shorter report written by Quiros to the Governor-General of the Philippines.[46]

The first European to reach Rakahanga was the Spaniard Pedro Fernandez de Quiros [47] on 2 March 1606. There are seven known pub-

[44] Warren Christopher, Acting Secretary of State. "Letter of Submittal." *Treaty With the Cook Islands on Friendship and Delimitation of the Maritime Boundary*, Executive P (96th Congress, 2d Session), p. V.

[45] Sir Clements Markham. *The Voyages of Pedro Fernandez de Quiros*, 1595–1606. 2 vols. Hakluyt Society, Series II, Nos. 14–15. London: The Hakluyt Society, 1904, pp. 30–31.

[46] Markham, I: pp. xi–xiii.

[47] Quiros was the Chief Pilot on the second voyage of Mendana: 1595.

lished accounts of Quiros discovering Rakahanga: the aforementioned narrative of Quiros himself, as dictated to Belmonte Bermudez; the journal of the pilot Gaspar Gonzalez de Leza; the narrative of the Franciscan provincial Juan de Torquemada; the journal of Fray Martin de Munilla, commissary of the Franciscans; the sumario breve of Juan de Iturbe, accountant and overseer; the relacion sumaria of Don Diego de Prado y Tovar; and a letter from Luis Vaez de Torres [48] to the King of Spain.[49] It was Torquemada that called Rakahanga atoll the island Gente Hermosa (the handsome people) because he was taken with the appearance of the Rakahangans.

Nassau was first sighted by Captain Louis Coutance,[50] in the ship *Adele* owned by Merle Cabot and company.[51] . . . Therefore, Nassau atoll was a French discovery. Manihiki was discovered on 13 October 1822, by the American whaling Captain Patrickson, on the ship *Good Hope*. It is not known precisely when or by whom Penrhyn was discovered. Captain William Sever named the atoll Penrhyn's Island after his ship *Lady Penrhyn* on 8 August 1788, even though the atoll was very well known.[52]

Between 1822 and 1870 the Humphrey Archipelago were frequently visited by American whalers. Seamen from these American ships occasionally deserted and became beachcombers and traders or agents for firms in the United States.[53]

Nassau atoll has a historic American connection similar to the other 4 atolls. Because of space considerations in this statement, I will limit my discussion to Nassau atoll as an example of the American claims to the entire group covered by this inchoate treaty.

The American trader John Ellacott acquired Nassau atoll about 1873. He exploited the island for copra and its quano deposits. Ellacott recorded his title to Nassau atoll with the United States Consular Court at Papeete, Tahiti.[54] Ellacott sold Nassau to the American trader Harry Jay Moors [55] in 1892. Moors recorded his title to Nassau atoll with the United States Consular Court at Apia, Samoa.[56] Moors sold his ⅔ interest in Nassau atoll to Messrs. Rye and Stunzer: it later passed from them to Burns, Philp and Co. in 1945 the New Zealand Government purchased Burns, Philp and Co. rights to Nassau. There-

[48] The Torres Strait were named after him.

[49] For the accounts of Leza, Quiros, and Torquemado, see Markham, 1904: Prado's relacion and a translation of Torres' letter are given in Henry N. Stevens and George F. Barwick, *New Light on the Discovery of Australia as Revealed by the Journal of Captain Don Diego de Prado y Tovar, Hakluyt Society, Series II*, No. 64 (London: The Hakluyt Society, 1930); and the journal of Munilla and Iturbe's sumario in Celsus Kelly, ed., *La Australia del Espiritu Santo—The Journal of Fray Martin de Munillo O.F.M. and other documents relating to the Voyage of Pedro Fernandez de Quiros to the South Sea (1605–1606)* and the Franciscan Missionary Plan (1617–1627), 2 vols. Hakluyt Society, Series II, Vols. CXXVI–CXXVII. (London: The Hakluyt Society, 1966).

[50] Louis Ruault Coutance, "extrait du Brick . . . l'Adele. . . . au Port Jackson sous le commandement de Louis Ruault Coutance, 13 praisial XI–10 frustidor an XII". (Copies of Miscellaneous MSS in Service Hydrographique de la Marine, Vol. 102, MS B 1190), (Sydney: Mitchell Library, 1803–1804).

[51] Merle, Cabot and Company was a French firm on the Ile de France (former name for Mauritius). At the time of Coutance's discovery of Nassau atoll, Mauritius was part of France.

[52] Arthur Phillip, *The Voyage of Governor Phillip to Botany Bay . . . to which are added the Journal Lieuto. Shorthand, Watts, Ball. & Capt. Marshall, with an Account of their New Discoveries*, (London: John Stockdale, 1789), p. 244.

[53] Edouard A. Stackpole, *The Sea-Hunters* (Philadelphia: J. B. Lippencott, 1953).

[54] William Wyatt Gill, *Jottings from the Pacific* (London: The Religious Tract Society, 1885).

[55] See footnote No. 13 for the background of H. J. Moors.

[56] The United States Consular Court was closed at Papeete, Tahiti in 1880, after Pomare V, was persuaded to abdicate and to declare Tahiti, and its dependancies "united to France". The U.S. Consular Courts of Papeete and Apia in recording Ellacott's and Moors' titles to Nassau and Niulakita atolls were acting in these recordings as Courts of Record of the United States.

fore ⅓ interest in Nassau atoll is presently owned by American citizens.

The present Cook Island Government does not recognize the ⅓ interest of these United States citizens in Nassau atoll. If the treaty takes force a few U.S. citizens shall suffer diminution of their rights and privileges to the ⅓ interest in real property on Nassau atoll.

During World War II the United States built and manned naval and air bases on Penrhyn atoll. In the post-war years the airstrip on Penrhyn was re-activated in connection with the American nuclear testing programmes.

In 1890, the United States Supreme Court in the case of *Jones* v. *United States*, 137 U.S. 202, took the view that the United States acquired the five aforementioned atolls covered by this inchoate treaty, under the Act of August 18, 1856 (11 Stat. L. 119), the so-called Guano Act, and that they were not within the lawful jurisdiction of any other government and under the sole jurisdiction of the United States.[57] Therefore Acting Secretary of State Christopher errored when he stated: "The U.S. claim has virtually no legal merit" . . . and "has never exercised government jurisdiction over these islands."

Christopher also stated in his submittal letter that the United States sovereignty over these atolls "is not supported by any other nation." Christopher thereby inferred that United States sovereignty over its claimed territory is not valid unless it is supported by another nation. He used the old lawyers technique of inclusio unius est exclusio alterius, which is to say, "you drew attention to that which you did not name by the act of naming anything at all." Mr. Christopher's views show that American sovereignty in order to be valid must be supported by other nations is abhorrent to the Society for the Protection of American Sovereignty.

In 1912 Italy obtained the express recognition by a number of States of her annexation of Tripoli and Cyrenaica. In September 1912, she approached the United States with a request for recognition, the United States Government replied that it was not its custom "to proceed in that manner, especially with regard to European affairs; that when the United States took over the Philippine Islands and Puerto Rico, foreign governments were not asked for their acquiescence nor for their recognition and none was given." [58] A fortiori, if the United States Government does not require acquiescence or recognition of its claim to Puerto Rico, then it does not require the support of other nations to make the United States claim of sovereignty to the Guano Islands as valid.

[57] Source: Circular No. 1 "Relative to the Guano Islands Appertaining to the United States" of Synoptical Series 1869, issued 12 February 1869 by Hugh McCulloch, U.S. Secretary of the Treasury.

Present name	Former name as bonded	Date of bond
Maruhiki	Humphreys	Feb. 8, 1860.
Nassau	Nassau	Do.
Penrhyn	Penhuyno	Do.
Pukapuka	Dangerous Islands	Do.
Rakahanga	Riersons	Do.

NOTE.—The above 5 atolls were all covered by bond No. 9.

[58] *Foreign Relations of the United States*, 1913, p. 609.

Mr. Christopher said that "(c)ontinued assertion of these claims is inconsistent with the U.S. interest of maintaining friendly relations with the peoples of the South Pacific." The State Department claims that good will may be gained in the entire South Pacific by abandoning these five atolls to the Government of the Cook Islands. What this is actually accomplishing is world-wide ridicule and an unstabled South Pacific, comparable to that of the United States experienced from the Wrangell Island debacle.[59]

The Soviet Navy has been very active in the Cook Islands for the last few years. Teams of Soviet Russian "scientists" have been stationed on Suwarrow Atoll,[60] with the permission of the Cook Islands Government, to investigate the feasibility of using the atoll as a Soviet "fishing" base. [61] If this inchoate treaty goes into force the Cook Islands Government could turn over to the Soviets the United States military base on Penrhyn, i.e., together with Suwarrow, Penrhyn is the only coral atoll in the territories claimed by the Cook Islands Government where large vessels are able to enter the lagoon. The main reason the ship *Kallisto* did not take its Soviets "scientists" to Penrhyn to investigate "peculiarities of the coral formation within" its lagoon, as it did on Suwarrow in 1976–1977, was that the United States claimed sovereignty over Penrhyn and the Soviets did not want to risk a confrontation since they had access to Suwarrow anyway.

Unlike the aforementioned inchoate treaties with Tuvalu and Kiribati (Hawaii's nearest foreign neighbors) the Cook Island Government would not agree to an article in this treaty to consult with the United States regarding any proposed use of the ceded atolls for military purposes by third parties.[62]

The Soviet Navy also left a team on Pukapuka in 1977 to investigate the atoll for nefarious purposes unknown to myself.[63] The Cook Islands Government gave permission to the Soviets for said visit. I informed the State Department about the then proposed visit of the *Kallisto* to the Guano Islands of the United States in late 1976, i.e., I remember telling K. Scott Gudgeon of the State Department's Legal Adviser Office of the voyage of the Soviet "research" (spy) ship *Kallisto* prior to the ship leaving the U.S.S.R. on said voyage.[64]

Mr. Christopher raised one other point in his "Letter of Submittal" that needs clarification. He stated that the "Cook Islands is in free association with New Zealand" and "may unilaterally declare its in-

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[59] Mark Seidenberg, "Wrangell Island: Chronology of a Polar Panama", *Trunk Line* (Los Angeles: Republican Central Committee of the Los Angeles, County), January 1978, Vol. XI, No. 5, pp. 9 and 11. David B. Nolan and Mark J. Seidenberg, "The Right of American Sovereignty over Wrangell Island: The Most Burning International Legal Issue of the Arctic." (Is to be published in *The Musk-Ox:* a journal on the north), (Sakatoon: Institute for Northern Studies, University of Saskatchewan), Winter 1982, No. 31.

[60] Lieutenant Mikhail Tazarev, of the Russian vessel *Suvarov* discovered this uninhabited coral atoll, now known as Suwarrow, on 28 September 1814. Suwarrow is the only coral atoll in the Cook Islands where quite large vessels are able to enter the lagoon. The lagoon with some dredging could accommodate a large Soviet naval fleet.

[61] A. G. Voronov, G. I. Ignatyev, and P. A. Kaplin, Reyc (Kallisto) No ostrova Tnkhogo Okeana (a trip of the (Kallisto) to some islands of the Pacific), *Vestnik*, (Moscow: Moscow Universitet), Serica V, Geografica, 1977, No. 5, pp. 111 to 118. It should be noted that "officially" the Cook Island Government gave the U.S.S.R. permission to investigate "peculiarities of coral formation within the Suwarrow lagoon."

[62] It should be noted that the Tuvalu treaty gave this right to the United States for only six months and the Kiribati treaty was for only ten years.

[63] From the Soviet spy ship *Kallisto*. It should be noted that Pukapuka is very close to the U.S. Naval base at Pago Pago, American Samoa.

[64] Mr. Gudgeon at the time acted very curt and indifferent about this Soviet spy ship going to the islands of American Polynesia. To be fair to Mr. Gudgeon, I told him at that time the ships name was *Kalypso*.

dependence from New Zealand at any time." If the Cook Islands declared independence from New Zealand they would no longer be under the ANZUS umbrella and could be the first South Pacific government to fall in the Soviet camp is Kiribati does not get there first.[65]

TREATY WITH NEW ZEALAND ON THE DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND TOKELAU, TREATY DOC. NO. 97–5

This inchoate treaty, as presently written, would cede to the Government of New Zealand three atolls under actual U.S. Sovereignty since the mid 1800's, i.e., island of Atafu, Nukunono, and Fakaofo.

It appears that Secretary of State Alexander M. Haig, Jr., was not properly briefed on the history of these United States sovereign South Pacific atolls, when he obfuscated their historic connection with the rest of the United States in his following statements:

> The Treaty establishes the maritime boundary between American Samoa and Tokelau, resolves the status of three Tokelauan islands in the area, and confirms United States sovereignty over Swains Island.
>
> In connection with establishing the maritime boundary it was necessary to address and resolve the issue of sovereignty over the islands of Atafu, Nukunono, and Fafaofo which together comprice Tokelau. These atolls have a total population of 166 (sic) people and a land area of four square miles.
>
> It was not until 1939 that the United States disputed the British or New Zealand claims of sovereignty. The United States based its claim to the island on mapping and on the Guano Act of 1856. Two of the islands were included in a United States Guano Mining Bond in 1856 but there is no indication that an American company has ever mined the islands for guano. The United States has never occupied these islands or exercised governmental jurisdiction over them. Measured against the longstanding United Kingdom/New Zeland claim, the United States claim to these islands has no substantial basis under applicable principles of international law. Our claim is not supported by any other nation, including our closest allies. Continued assertion of these claims is inconsistent with the United States interest of maintaining relations with the peoples of the South Pacific. The islands have no appreciable strategic or economic value to the United States.
>
> Delimitation of (sic) the (sic) maritime boundary also involves the issue of sovereignty over Swains (sic) Island in American Samoa. Swains, a privately own island, was annexed to American Samoa in 1925. The Tokelauans have claimed that Swains Island is historically and culturally part of Tokelau, and they have so informed the United Nations. This Treaty effectively extinguishes

[65] It is well known of the connection between the Cook Islands Party (CIP) and the New Zealand Communist Party (NZCP). CIP leaders were trained by the NZCP. The NZCP is a Moscow orientated movement that favors the end of the ANZUS treaty. It acted as the conduit for the Soviet Union in getting permission to "visit" Suwarrow and Pukapuka, from Sir Albert Royale Henry K.B.E. (former Premier of the Cook Islands) in 1976. Sir Henry was trained by the NZCP. See: Thomas R. A. Davis, "The Democratic Party" in *Cooks Islands Politics*, ed. Ron Crocombe (Auckland: Polynesian Press, 1979) p. 64.

Ieremia Tabai (President of Kiribati) announced in 1979 just prior to its independence from Great Britain. "If the 'Russian' come (to the Gilberts), we would talk to them and not send them away."

the Tokelauan claim and confirms United States sovereignty over Swains.

The Treaty was negotiated through diplomatic channels and was concluded between the United States and New Zealand, rather than Tokelau, because Tokelau is a non-self-governing dependency of New Zealand.[66]

These statements by Secretary of State Haig were not correct and needs clarification. The following facts will correct the errors stated by Haig in the aforementioned "Letter of Submittal."

The Tokelau group lie approximately 300 miles north of Western Samoa. It consists of Atafu, Fakaofu, Olosenga, and Nakunono atolls. The group was politically dominated by the Fakaofu kings until the last half of the 19th century, because of that atoll's possession of "Tui Tokelau" (stone god to which the whole group owed allegiance until 1918).

The three northernmost atolls each consists of a number of reef-bound islets encircling a lagoon. These islands, also known as motu, vary in size from 100 metres to six and half kilometres long. The largest atoll is Nukunonu of 540 hectares; Fakaofo and Atafu having 260 and 200 hectares respectively.

From Atafu in the north to Fakaofo in the south, these three northern atolls of the group extends just under 200 kilometres.

The atolls are three to five metres above sea level.

Olosenga (Swain's Island), which lies about 320 km. north of Samoa is an atoll about 2½ km. long by 1¾ km. wide. The greatest elevation of land is about 6 m.

Fakaofo atoll was the first Island of the Tokelau Islands to be populated and the original settlement date was "about the middle of the seventeenth century." [67] The last atoll of the group was not populated until the early 1840's, i.e., Olosenga.[68]

The atolls of Atafu, Fakaofu, and Nukunono were first visited by Captain Smith of the whaler *General Jackson* of Bristol, Rhode Island February 1835.[69] Therefore, the first contact the entire populated group had with the outside world was with the crew of an American ship. Captain Smith gave the name "D'Wolf Island" to Fakoafu atoll in honor of the owner of the *General Jackson* on 14 February 1835.

According to R. Gerald Ward, the ship *General Jackson* "was chased by about 30 canoes" a few miles from Fakaofu atoll.[70]

However, according to Stephen Crocker: The *General Jackson* made the first landing by white men at Fakaofu atoll "and found the natives friendly" to his crew. This landing took place in 1839 and was the first time a king of Tokelau had contact with the outside world.[71]

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[66] Alexander M. Haig, Jr., Secretary of State, "Letter of Submittal", *Treaty with New Zealand on the Delimitation of the Maritime Boundary Between the United States of America and Tokelau*, Treaty Doc. No. 97–5. pp. V–VI.

[67] Gordon MacGregor, *Ethnology of Tokelau Islands*, (Honolulu: Bernice P. Bishop Museum, 1937). Bulletin 146, p. 17.

[68] Lt. L. Hudson of the United States Exploring Expedition in 1841 established priority for the United States to Olosenga, since his occupation from this congressionally authorized voyage of discovery predates the forming of a colony on the atoll (by islanders from Fakaofu). Hudson named the atoll Swains after a whaling captain called Swain.

[69] Yankee (pseudonym), "D'Wolf Island", *Bristol Gazette and Family Companion*, Vol. III, No. 11 (year 1835).

[70] R. Gerald Ward, *American Activities in the Central Pacific*, Vol. II, p. 304 (Reprint of report in *New Bedford Mercury*, 23 October 1835).

[71] Stephen R. Crocker, MS. nd., *Journal of the "General Jackson" 1836–9*, Nicholson Collection, Providence Public Library (note entry for 29 January 1841).

The first detailed knowledge of the Tokelaus was obtained when the U.S.S. *Peacock* and *Flying Fish* of the United States Exploring Expedition spent several days among them in 1841. According to Horatio Hale (the expedition's ethnologist and linguist) : "The village islet at Fakaofu was covered with coconut trees, under the shade of which the houses were scattered, a few yards from one another. They were very numerous, the village being quite a large one . . ." [72] During this occupation by the U.S. Exploring Expedition of the Tokelau Islands, the United States made its first sovereign claim to these islands, i.e., in juxtaposition to the 1840 claim of the United States to Hull atoll.

In 1856, Eli Jennings, an American with his Samoan wife claimed title to Olosenga. The Jennings took over the plantation and its Tokelauan laborers. The atoll has remained in the Jennings family ever since, producing up to 200 tons of copra a year.

In 1863, Benjamin Hughes, an American, with his wife and child claimed title to Fenuafala Islet of Fakaofu atoll.[73] In June 1865, Benjamin Hughes filed a complaint against Litoa (King of the Tokelau Islands) in the United States Consular Court at Apia, Samoa. Hughes alleged in said complaint that the "alika" [74] Litoa committed among other things Cocoa nuiferacide on Fenuafala Islet. Both Hughes and Litoa were residents of Fakaofu atoll. Fakaofu atoll was included in Guano Bond No. 9, dated 8 February 1860 by its variant name Low Islands.[75] The United States Consular Court at Apia, Samoa assumed jurisdiction in this case on the rounds that the sovereignty and jurisdiction of the United States was extended to Fakaofu atoll on 8 February 1860, by the Guano Island Act. The United States Commercial Agent for Apia heard this case in his capacity as a "court of record of the United States" and aside from his extraterritorial status.[76]

In the late 1870's an American trader of Portuguese descent ("potuki Amelika" in Tokelauan) had children by many women in each of the atolls.[77] His children's descendants can be located in the current

[72] Horatio Hale, *United States Exploring Expedition . . . Ethnography and Philology* (Philadelphia : Lee and Blanchard, 1846), p. 157.

[73] Benjamin Hughes came to Fakaofu atoll with his family from Penrhyn toll (where he lived for many years).

[74] Alika is Tokelarean for lord, i.e., despotic ruler of these islands. See : Hosea Kirifi and J. H. Webster, *Tokelau-English Dictionary.*

[75] It should be noted that only two bonds were issued under the Guano Act of 1856. Bond number one covered Bakers atoll (Phoenix Islands) dated : 28 October 1856, and bond number two which covered Jarvis atoll (Line Islands) was issued on the same date. All of the Tokelau Islands were included under its variant names under Bond No. 9, Bond No. 9 was issued on 8 February 1860.

Present name :	*Name on Bond No. 9*
Atafu	Duke of York.
Fakaofu	Low.
Nukunono	Clarence.
Olosenga (Swain)	Quiros.

[76] *Hughes* vs. *King of Bowditch,* United States Consular Dispatches-Apia, U.S. National Archives Publication T–27 (5 June 1865).

In the case of *United States* vs. *Thompson*, 1 Extraterr. Cas. 261 (1912) and *United States* vs. *Willis B. Kilgore*, 1 Extraterr. Cas. 395, 403–404 (1914), the United States Court For China (one of the United States Consular Courts) found that its jurisdiction was not necessarily confined to the territorial boundaries of China and that in certain cases it sits in its capacity as a "Court of the United States" and aside from its extraterritorial status. The United States Court for China in the case of *United States* vs. *William Dommer*, 1 Extraterr. Cas. 914, 915 (1919) held that it had jurisdiction "over offences committed on an American ship 'on the high seas', citing *U.S.* vs. *Kilgore* and *In re Ross*, 140 U.S. 453 (1891) :

> ". . . this court's power to take cognizance of crimes committed outside of Chinese territory may arise not only from the Acts of Congress passed since the establishment which according to a well settled doctrine came into force as to this court upon its organization." *United States* vs. *Willis B. Kilgore*, 1 Extraterr. Cas. 395, 404 (1914).

[77] Pamela D. Raspe, "Analysis of the Breeding Structure of a Polynesian Isolate" (M.A. thesis, University of Auckland, 1972).

genealogies on all Tokealau atolls, and the genetic implication of his sojourn shows that United States citizens have been living on all of the atolls continuously since the 1870's.

In 1889 the commander of the HMS *Egeria* declared the Union *Islands (variant name for the Tokelau Atolls*, meaning the American Union of States) protectorates of the United Kingdom in order to establish British claims to these islands in case they should prove of use as staging points for a trans-Pacific cable which had been proposed at the Colonial Conference in 1887. The most likely cable bases were held to lie in the Phoenix group, and the Tokelau Protectorates were declared (en passant) in the course of a voyage to the Phoenix Island.[78] The United Kingdom did not claim sovereignty to the Tokelau Island by the voyage of the HMS *Egeria*.[79] The Nukunono Islanders made the strongest objections to said protectorate on the grounds that the portion of the islands' population which "embraced Christianity" were Roman Catholic, because of the Marist missionaries telling their flock that the British were Protestants. No British residents were established in the atolls after the declaration of the Protectorates because of the strong loyalty the Tokelau Islanders had to the Marist missionaries and the American traders sojourning in the Tokelau Islands.

In 1889 the closest U.S. and British Officials were in Apia, Samoa to the Tokelau Islands. The reason that Britain had the chutzpah to make a protectorate over islands that were under American sovereignty since 1860 was that in 1885 the British and Germans entered into a secret treaty to drive American traders out of Oceania by dividing the Pacific into spheres of influence between British and German interest. The United States Government protected its rights at that time.[80]

The Samoan Islands were divided, however, by a treaty between the United States, Great Britain, and Germany, on December 2, 1899 under which the rights and claims of Great Britain were renounced as to the entire group of islands and the rights and claims of the United States and Germany restricted to separate groups of the islands. Upolu Island was renounced in favor of Germany by the United States [81] and the

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[78] W. P. Morrell, *British in the Pacific Islands* (Oxford: Clarendon Press, 1960).

[79] It should be noted that sovereignty does not derive from a protectorate in international law. See: *R. vs. Crowe, ex parte Sekgome* (1910), 2 King's Bench Reports 576 at p. 620. Therefore, the U.K. can not claim the Tokelau atolls based on the acts of the HMS *Egeria* in 1889. Britain declared the United States territory of Alaska a British Protectorate in 1879 (12 years after the U.S. acquired Alaska from Russia). Said protectorate was declared by Commander H. Holmes a' Count, of the HMS *Osprey* as he entered Sitka (Sitka: Sitka Printing Company 1968) p. 31: ". . . the British gunboat *Osprey* steaming into the harbor with its guns trained on the native village."

[80] It should be noted that the 1887 Colonial Conference directed that islands taken for the trans-Pacific cable could only be held as long as the Anglo-German treaty of 1885 was still in force. In 1892, the U.S. Secretary of State wrote the British Government of the United States paramount claim to these islands. He wrote: "The germs of civilization were planted in the group by the zealous endeavor of American citizens more than half a century ago. The result of this work, carried on by American citizens and money, has been, in fact, to change the naked barbarism of the island natives into enlightened communities and to lay the foundations of the trade and commerce which have given these islands importance in the eyes of Europe today. Dr. George H. Blakeslee, "The Islands of the Pacific Ocean" (Paper delivered to The Conference on the Limitation of Armament, Washington, D.C., April 14, 1922) p. 16.

[81] In return for British withdrawal from Samoa, Germany surrendered all her rights in the Tonga Islands, and all the Solomon Islands east and southeast of Bougainville. Hertslet's *Commercial Treaties*, Vol. 21, 1901, p. 1178.

To complete British control over the Tonga Islands, Great Britain asked the United States also to renounce in her favor all American rights in the Archipelago and to agree to the abrogation of the United States-Tonga Treaty of 2 October 1886. This treaty granted to the United States most favored nation guarantees and the right of establishing a naval coaling and repair station. Malloy, Treaties, II, p. 1781.

Ambassador Baron Julian Paucefote of Great Britain, in a letter (27 November 1899) to U.S. Secretary of State Hay, commented as follows upon the grant to the United States of the privilege to establish a coaling station:

> "Those articles are of course incompatible with the intention in the settlement of the Samoan difficulty that the Tonga Islands should pass to Great Britain in as full

treaty entered into force on 16 February 1900.[82] This treaty caused the Anglo-German treaty of 1885 to become obsolete. A fortiori, the Protectorate decrees of 1889 over the Tokelaus should also be obsolete in light of the determinations made at the Colonial Conference in 1887. The German authorities at Apia would not let the British claim administration of the Tokelaus from Apia any more. Because of the action by the German authorities at Apia, Britain moved its administrative center for Tokelaus to Tonga. The United States-Tonga Treaty of 2 October 1886 became a road block in Britain administering the Tokelaus from Tonga. The Privy Council of Tonga ordered the British Deputy-Commissioner to end its claim into jurisdiction over the Tokelaus from Tonga territory. The High-Commissioner in 1908 shifted the administration center for the Tokelaus to Banaba Island, since Banaba was a British Colony and the British administered the so-called "Gilbert and Ellice Islands Protectorates" from there.

Shortly before 1910, the British Commissioner of the Gilbert Islands col'ected tax from Mr. Jennings on his visit to Olosenga, amounting to some $80.00. Upon Jennings protest that the island was American and not British, the tax was later remitted, and the British Assistant High Commissioner for the Western Pacific informed the American Consul at Apia, 10 November 1910, that the British Government recognized Olosenga as an American possession.[83]

On 29 August 1914, a New Zealand military force, led by Colonel Robert Logan, seized and occupied Western Samoa. New Zealand's military occupation continued under Colonel Logan, C.B. until 30 April 1920.[84]

By the Treaty of Versailles, a "C" Class mandate for the future government of Western Samoa was offered to and accepted by New Zealand. It continued from 1920 until 1946.

In 1925 the New Zealand authorities in Apia began to claim control over the Tokelau Island. This activity by the New Zealand authorities caused on 4 March 1925, President Calvin Coolidge to duly adopt and approve a joint resolution (43 Stat. 1357; 48 U.S.C. 1431) that extended to Olosenga atoll the Government of American Samoa.

According to May 1925, issue of *Ole Foatonu* (No. 5, vol. XXIII) published by the Government of American Samoa at Pago Pago, which reads as follows:

> "The (U.S.S.) *Ontario* arrived at Swains (Olosenga) Island the morning of May 13, 1925, and the official party immediately went ashore. At 3:00 p.m., the official ceremonies began. Lieutenant Commander Edgar, U.S. Navy, representing the Government of American Samoa read his orders from the Governor of American Samoa . . . proclaimed sovereignty of the United States over the Island. The American flag was then hoisted and the *Ontario* fired the National Salute of twenty-one guns.

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sovereignty and possession as Upolu and Savaii are to pass to Germany and Tutuila to the United States."

Secretary of State Hay, by letter to Ambassador Paucefote (dated 29 November 1899) declined the suggestion of the British Government, alleging that:

> "In the preliminary conversation which proceded the drafting of the tripartite convention now under discussion, there never has been any suggestion of the renunciation by the United States of any rights they might have outside the Samoan group of Islands."

[82] Treaty for the Adjustment of Jurisdiction in Samoa of 2 December 1899 (entered into force 16 February 1900). 31 Stat. L. 1878 et seq.

[83] Consul at Apia to Department, 26 November 1910. File No. 811.0141Q/5. Also, to the same effect, communication from the British Government, 30 January 1918; Consul at Apia to Department of State, 26 November 1920. File No. 130J499.

[84] S. J. Smith, "The Seizure and Occupation of Samoa," in H. T. B. Drew, *The War Effort of New Zealand* (1923), p. 23.

"After the hoisting of the flag, a Samoan Pastor led the assembly in the Samoan Hymn, after which he made an appropriate speech telling the people of the island that heretofore they had no father and no mother and never know where they stood but that now the great American Government would take care of them, and they would have a father and mother."

The New Zealand Administration was hated by large groups of Samoans and Tokelauans during this period. The breaking point came on "Black Saturday," 28 December 1929. The Mau (opinion movement) staged a demonstration to welcome A. G. Smyth home after his exile, and A. Hall-Skelton who accompanied him.[85] Col. Sir Stephen S. Allen had ordered that at least one "wanted" man was to be arrested in the event of another parade, and the inspector of police sent the Mau a warning of his intention to arrest any men participating for whom warrants had been issued, though Mau leaders later denied having received it. The arresting party consisted of a sergeant and six constables, carrying revolvers. A supporting party of twenty men with rifles and a Lewis gun was in readiness. An attempt was made to arrest Mata'utia Karauna, the Mau secretary who was wanted on the charge of assault. As a result of the clash which followed, in which about 300 took part, Tupua Tamases Lealofi III, ten other Samoans and one European constable were killed, and some thirty Samoans and Tokelauans wounded.

The Mau was immeasurably strengthened by this "martyrdom" of Tamases and ten other patriots and determined never to submit or to forget New Zealand's "military atrocities" against an "unarmed procession." They all planned to ask the United States of America to take over the government. Because of the moral support of the American Consul in Apia to the Mau the New Zealand Administrator for Western Samoa (and Tokelau) closed the U.S. Consulate at Apia and cut the telephone lines to Pago Pago.

As you know, the State Department has a hang-up with a 1939 note. The U.S. sent notes to Britain prior to and after that year in re United States Sovereignty over Pacific Islands. I can not see why that note is more important than any other note. Can you?

There is a good size Tokelauan population in both American Samoa and the Western United States. The Tokelauans would emigrate from Atafu, Fakaofu, and Nukunono atolls to Olosenga atoll. From Olosenga the Tokelauans would move on to Tutuila (the main Tokelau community lives near the Lyndon B. Johnson Tropical Medical Center). From there they would move on to Hawaii and California. (Almost all of the Samoan and Tokelau population in the States live in California and Hawaii.) There are more Tokelauans living in Hawaii and California than there are in Tokelau. (There are more Tokelauans in Peru than in the Tokelau. because of the Slave Raids in the early 1860's.) The present Tokelauans are "an improbably bizarre genetic mixture" according to P. D. Rasre. because of several American beachcombers settling in the islands and intermarrying with local women.

[85] According to Mary Boyd, "The Record in Western Samoa to 1945" in Augus Ross, *New Zealand's Record in the Pacific Islands in the Twentieth Century* (Wellington, New Zealand: The New Zealand Institute of International Affairs. 1969), p. 123: New Zealand was identified in Samoan (and Tokelauan) minds with tyrannies "such as interment, deportation, censorship, curfews and prohibition of trade."

In 1948 (nine years after that 1939 note) New Zealand declared formal sovereignty over the Tokelau Islands even though they were under U.S. Sovereignty since 1860.[86]

The treaty (of 2 December 1980) was signed by Amusia Patea, Itieli Pereira, and Senio Sakalia for New Zealand. I do not know why the Faipule for Nukunono did not sign the treaty, but it may be that he objected to the ending of limited States Sovereignty, since the Nukunono Islands made the strongest objections to British-New Zealand claims of control over that Island ever since 1889.[87]

The real power in these islands are the chiefs, not the Faipules (who are the "Uncle Toms" for the New Zealand Government).

I know for a fact that the chiefs of the Tokelaus came to Pago Pago for help, i.e., they asked Governor H. Rex Lee of American Samoa to order the New Zealand Administrator out of their islands, since they considered the United States Government their "mother and father." Governor Lee said it was out of his control and told the chiefs to write the U.S. Department of State.[88]

We of the Society for the Protection of American Sovereignty believe that these treaties should be rejected in their present form and call on the Senate to stay with the status quo ante, until new treaties can be drafted that will protect the American interest in the South Pacific and prevent the incursion of Soviet bases in the area.

SAN DIEGO STATE UNIVERSITY,
DEPARTMENT OF TELECOMMUNICATIONS AND FILM,
San Diego, Calif., July 14, 1975.

MR. MARK SEIDENBERG,
Young Americans For Freedom, UCLA,
Los Angeles, Calif.

DEAR MR. SEIDENBERG: In your recent letter you asked me for a note of confirmation regarding the visit of a number of chiefs from the Tokala Islands to my office in Pago Pago.

Some time during the year 1962 or 1963 (I do not have my files so I can not confirm the exact date) a group of chiefs from the Tokala Islands showed up at my office unannounced and asked for an audience. To the best of my recollection there were some eight to twelve chiefs. I immediately granted them an interview and they told me that they had been visiting Tokalan friends in American Samoa for the past week or ten days. Their spokesman simply stated they were sent there by their people to find out the truth about the rumors of the wonderful things that had taken place in American Samoa for the past year. Their spokesman continued by saying that they liked what they saw and as a result, they would like to cede all of the Tokala Islands to the United States.

I advised the chiefs that I did not have the authority to accept such a cession. They were under the impression that I could, as they had heard that I had complete authority in all matters pertaining to

[86] See: Tokelau Islands Act of 1948.

[87] In each island, the Faipule (who is also the magistrate) are chosen for a term of three years by the islanders on the approved voting list. Said list is approved by the Administration at Apia. The Administrator also approves who can be considered as Faipules. The reason is New Zealand's Tokelau Islands Act of 1948 requires that the Faipules are to be formally appointed by the Administrator. This takes away some of the traditional powers of the High Talking Chiefs.

[88] H. Rex Lee (Former Governor of American Samoa), "Letter to Mark Seidenberg," dated: 14 July 1975. Attached as an appendix.

American Samoa. They were very disappointed and said they did not know how to go back and tell their people that they had failed in their mission to immediately cede the islands to American Samoa. They were then advised that any formal move along those lines would have to take place through our State Department and I advised them that they should discuss the matter carefully with New Zealand who had immediate responsibility for their administration.

I am sorry that I do not have exact dates and names and numbers, but you understand that the files, if they still exist are in American Samoa. I trust the above will be adequate for your purposes

Sincerely yours,

H. REX LEE.

MARK J. SEIDENBERG'S RESPONSES TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

Question 1. On page 22 of your statement, you assert that by virtue of Article IV, Sec. 3, Cl. 2 of the Constitution, the House of Representatives must approve these treaties. In *Edwards* v. *Carter* 580 F2d 1055 (D.C. Cir.), *cert denied* 98 Sup. Ct. 2240 (1978) the United States Court of Appeals of the District of Columbia held that Article 4, Sec. 3, Cl. 2 does not bar the President and the Senate, by a self-executing treaty, from disposing of property of the United States without the concurrence of the House of Representatives. Do you contend that these treaties are not self-executing? Otherwise, how do you reconcile your assertion with the Court's holding?

Answer. The opinion per curiam within *Edwards vs. Carter*, 580 F2d 1055 (D.C. Cir.), *cert. denied* 98 Sup. Ct. 2240 (1978) in my view is obiter dictum, since this court affirmed the District Court for the District of Columbia (Barrington D. Parker, J.) which denied injunctive relief on lack of standing.[1] Even if it was not obiter dictum, the *Edwards* case would not operate in the 9th Cir., since the decisions within that circuit held that the property clause of the Constitution is the exclusive method for disposing of federal property (Cf. *United States vs. California*, 332 U.S. 804, 805 (1947), citing *United States vs. San Francisco*, 310 U.S. 16, 29–30 (1940)).[2] Note: e.g. Canton Atoll's venue is within the 9th Cir. (Cf. *United States vs. Paquet*, 131 F. Supp. 32 (D.C. Hawaii 1955)).[3]

The *Edwards* opinion per curiam asserverated (580 F. 2d 1055, 1063–4) that if property is owned by private individuals and covered within the ceded land the treaty can not be self-executing, because the United States has to acquire said property prior to its cession. Such acquisition necessitates "appropriation of funds," implementing legis-

[1] In *Myers vs. United States*, 272 U.S. 52 (1926), the Court upheld the right of the President to remove a postmaster from office without restraint by Congress. Although this was the narrow point decided, the opinions consisted of 243 pages. In the majority opinion, language was used to the effect that the power of removal extended to members of the independent regulatory commission. But when in a later case, *Humphrey's Executor vs. United States*, 295 U.S. 602 (1935), the Government invoked the language in the *Myers* case and sought to apply it to a member of such a commission (the Federal Trade Commission), the Court held such language as dicta and therefore not controlling in the disposition of the later case.

[2] Hearings Before the Committee on Merchant Marine & Fisheries. House of Representatives, 95th Congress, 2nd Session. Serial No. 95–32, "Power of Congress to Dispose of U.S. Property." It should be also noted in the *California* case that the property clause power of Congress was held to be without limitation in the disposing of Federal property. A fortiori, if the disposing of Federal property can be accomplished through self-executing treaties it places limitation on Congress in the disposing of Federal property.

[3] Like Wake Atoll, Canton Atoll venue is in the United States District Court for Hawaii.

lation is required, see p. 1058–59 of 580 F. 2d 1055. Similarly, the treaties with Tuvalu, Kiribati, Cook Islands and New Zealand also require implementing legislation prior to cession of the islands in American Polynesia. Unlike the Panama Canal Treaties, private individuals hold title to lands covered by these inchoate treaties. See, e.g., p. 25 and p. 32 of Mark Jerome Seidenberg's statement at the December 1, 1981, hearing before the Subcommittee on East Asian and Pacific affairs.

Question 2. On page 23 of your statement you discuss the historical ownership of Nuilakita atoll, which is recognized in the proposed treaty with Tuvalu as under the sovereignty of that country. You contend that a one-third interest in the atoll is presently owned by American citizens. Do you know who these citizens are? Are you aware of any American citizens currently asserting a claim of ownership of a portion of this atoll?

Answer. On 13 March 1926, Mrs. Fa'animonimo Misimoa nee Asiono of Ululoloa, Samoa acquired one third interest in Niulakita Atoll. Mrs. Misimoa was naturalized as a United States Citizen in the United States Consular Court at Apia, Samoa, on 10 July 1883. She still was a United States Citizen in 1932, when she passed away. To the best of my present knowledge the testamentary disposition has not occurred to said one-third interest in the real property on Niulakita Atoll, but the title is still held by the executor-trustee of the decedent for Mrs. Misimoa's heirs (who are United States Nationals). Mrs. Misimoa had occupied Niulakita Atoll for the United States. Her daughter Sophia Hellescoe nee Misimoa, was born on Niulakita Atoll. Mrs. Hellescoe was also a United States Citizen. The United States Consulate at Apia, Samoa, registered Sophia's birth.

Question 3. On page 25 you state that the other three atolls recognized as under the sovereignty of Tuvalu are owned in "fee" by the United States. Are you contending that the United States has title in fee simple to these atolls? Do you have any evidence to support this contention?

Answer. Yes, I contend that the three atolls are owned in "fee" by the United States. I base that fact on the status of the atolls prior to the time the United States acquired its sovereignty over them in the 1840's (i.e., in 1819 & 1821 the U.S. sovereignty over them was inchoate). The U.S. fee in these three stated atolls are based in part on Cf. *Federal Power Commission vs. Tuscarora Indian Nation*, 362 U.S. 99 (1960), and *Johnson vs. McIntosh*, 8 Wheat. (21 U.S.) 543 (1823).

Question 4. Citizens of the United States own real property all over the world, and citizens of other countries own property here. Is it your contention that ownership of property by a citizen of a foreign country is sufficient to establish foreign sovereignty over that property?

Answer. No. It is not sufficient to establish sovereignty over real property by mere ownership (if the term ownership is used in a proprietary sense). When Moors sold his two thirds interest in the real property on Nuilakita and Nassau atolls he only sold the proprietary ownership. Sovereignty at that time was in the United States. The problem is that the four governments to which the 26 atolls are to be ceded believe that they have Sovereignty over United States Sovereign atolls because of sales of land on them (even though these sales only took the form of proprietary interest).

Question 5. It is well established in international law that discovery alone is insufficient to create more than "inchoate" sovereignty which, to be perfected must be followed by effective and continuous occupation. It is also well established that failure to perfect sovereignty over a period of time in the face of competing claims results in a loss of sovereignty by abandonment. Your statement seems to assume that sovereignty continues indefinitely once a claim is asserted. Can you cite any legal authority in support of this view?

Answer. I agree with the first sentence of question number five. It should be noted that "effective and continuous occupation" does not have to be actual occupation.[4] I strongly disagree with the second sentence. It is not established in international law that competing claims over a period of time result in a loss of sovereignty by abandonment.[5] It is a very controversial question as to whether the right of prescription is an accepted principle of the law of nations, in the absence of any convention establishing a term of prescription. Without a term for prescription there can be no abandonment. See appendix A to this reply. A single act of sovereignty suffices to vest title to terra nuillius in a State. In state practice symbolic annexation has been held to be effective and continuous occupation, as in the *Clipperton Island* case.[6] Examples quoted by Keller, Lissitzyn, and Mann are Easter Island (in 1770), Florida, Java, New England, North Carolina, Nova Scotia, Trinidad and Virginia.[7]

Question 6. Are you aware of any formal assertion of sovereignty by the United States over the Ellice Islands between 1892, when the British protectorate was proclaimed, and 1939?

Answer. The British did not proclaim one protectorate over the Ellice Islands until 1910 or 1911. Yes, I am aware of a few. Mr. Harry Jay Moors recorded his title to Nuilakita Atoll at the United States Consular Court at Apia, Samoa. His employees informed Captain Edward H. M. Davis, R.N. in a flag waving of "Old Glory" on the Nuilakita beach. NOTE: Moors title to Nuilakita Atoll was a public record at the United States Consular Court at Apia, Samoa.[8]

Question 7. Your discussion of Canton Island cites several contacts by American citizens and vessels during the mid-19th century, the last occurring in 1872. The United Kingdom asserted sovereignty over the island in 1936. Are you aware of any assertion of sovereignty by the United States prior to President Roosevelt's proclamation of 1938 authorizing the Secretary of the Interior to exercise control over Canton and Enderbury? Can you document any U.S. occupation of Canton from 1872 to 1939?

Answer. In the British Foreign Office Confidential Print No. 6269 it states on page 7 that Canton or Mary Island and Enderbury are claimed by American Citizens. The way the sheet is set up it gives the

[4] It was ruled in the *Clipperton Island* case, 26 American Journal of International Law (1932), 390 et seq. that a form of symbolic annexation meets the requirement for "effective and continuous occupations."

[5] "The Chamzal Arbitration Between the United States and Mexico," *The American Journal of International Law*, Vol. 5 (1911), p. 782, 805–807.

[6] According to the *Clipperton Island* case, supra, "a territory by virtue of the fact that it was completely uninhabited, is from the first moment when the occupying States makes it appearance there, at the absolute and undisputed disposition of that State, from that moment the taking of possession must be considered as accomplished, and the occupation is hereby completed."

[7] A. S. Keller, O. J. Lssitzyn and F. J. Mann, *Creation of Rights of Sovereignty through Symbolic Acts* (1938).

[8] It should be noted that the British claim of protectorate was not formally sent to the United States Government in the form of a diplomatic note.

impression that American Citizens may have been on both Canton and Enderbury in June and July of 1889. Also in 1937 the Commanding Officer of the United States minesweeper *Avocet* informed the Commanding Officer of the New Zealand sloop of war *Wellington* at Canton Atoll that Canton was territory of the United States. The *Avocet* arrived at Canton Atoll first and raised the "stars and stripes". Then the *Wellington* landed its party and the commander of the *Wellington* declared Canton as British. The planting of the British flag in December, 1936 was performed by a privately owned sloop named *Leith*. (See: *New York Times* of 11 July 1937). However, according to Captain E. H. Bryan, Jr., (I met Capt. Bryan in Honolulu in 1970) the British Landing took place on August 6, 1936, from the H.M.S. *Leith*. Said party according to Bryan did not plant a British fiag, but posted a sign on a coconut palm, claiming the island in the name of King Edward VIII. According to the *N.Y. Times*, supra, the *Leith* returned in 1937 and repeated the ceremony in the "name of George VI". However, according to Bryan it was a party from the *Wellington* in 1937 (not the *Leith*) which posted a sign on a coconut palm, claiming the atoll in the "name of George VI". According to Bryan the *Avocet* was a seaplane tender and not a minesweeper. However, both accounts agree that the *Avocet* arrived two weeks before the *Wellington* and the commander of the *Avocet* was Capt. J. F. Hellweg, USN, see J. F. Hellweg, "Eclipse adventures on a desere isle," *National Geographic Magazine*, 72: 377–394, September, 1937. The events of 1937 came down in the following manner to the best of my present knowledge.

In May, 1937 the Navy Department ordered the U.S.S. *Avocet* to go to Canton Atoll and take a survey of Wing's lagoon to check if the lagoon could handle seaplanes. About one year earlier (according to W. J. Mullahey, the former Director, Hawaii Central & South Pacific, Pan American World Airways, in a letter dated: 18 February 1969) the U.S. Department of Commerce became interested in the sovereignty of the uninhabited Central Pacific islands, of "American Polynesia" (guano islands appertaining to the United States) and charted the Maui Baldwin family yacht, the MV *Kinkajou* to carry a team of Hawaiians with equipment to Canton "for weather reporting purposes" (it should be noted that the official purpose of the *Avocet* was to "observe the total eclipse of the sun, which occurred on July 8" even though Canton Atoll was twelve hundred miles from the point of maximum totality). It should be noted that the activity in the Department of Commerce with Canton Atoll did not start in 1936. In 1928, at the request of Sir Charles Edward Kingsford-Smith, the Department of Commerce authorized the northern rim of Canton Atoll as an "emergency landing place between Hawaii and Fiji" for the airplane *Southern Cross*. (see: C. E. Kingsford-Smith *Story of Southern Cross Trans Pacific Flight in 1928*). It should be noted that Kingsford-Smith picture is on the Australian 20 dollar note. The *Southern Cross* passed-over the atoll, and fortunately did not have to try out said emergency landing place. The *Southern Cross* over flight was the first contact with the first contact with the Atoll by anyone, since the members of the Whitney South Sea Expedition of the American Museum of Natural History visited Canton Atoll between 10 & 17 March 1924, (see: Robert Cushman Murphy, *Birds collected during the Whitney South Sea Expedition*, IV. American Museum Novit., No. 322:–5). On the arrival

of the *Wellington* at Canton Atoll in June, 1937, its commander ordered Capt. Hellweg to remove *Avocet* from its anchorage, so the *Wellington* could anchor at the same spot. Capt. Hellweg refused and informed the commander of the *Wellington* that Canton Atoll has been United States territory since 1854.

I do not regard the act of the *Leith* in 1936 as an assertion of British sovereignty.

The *Wellington* found another anchorage at the other end of the Atoll and sent a party ashore to raise the Union Jack. At this point Capt. Hellweg had a flag waving ceremony of the "Stars and Stripes" with the National 21 gun Salute. All this happened on 3 June 1937 in sight of each others party. At this point the Wellington's men erected a brick structure with a iron Union Jack, but was soon topped by the American built concrete pyramid with an American Flag made of stainless steel.

Between June 3, 1937 (date of the *Wellington Affair*) and March 3, 1938 (date of the issuance of Executive Order No. 7828) the assertions of sovereignty by the United States number several hundred. The following are a few examples of the assertions:

(1) On August 9, 1937 the State Department delivered a diplomatic note to the British Government informing the British that the United States did not accept the Order in Council of March 1937 as binding on the United States, see: RG 59, 811.0141 PG/9. State Department Note to the British Government on Canton Island, 9 August 1937.

(2) On July 23, 1937, Actin[g] Secretary of the Navy William D. Leahy, at the cabinet meetin[g] brought up the Navy's planned use of Canton Atoll as a patrol plane base, see: RG 59 811.0141 PG/11½. Memorandum for the Secretary of State from J. P. Moffat of the European Division, 26 July 1937.

(3) On July 26, 1937, President Roosevelt approved the Navy's plan to occupy Canton Atoll from Honolulu, see: Franklin D. Roosevelt Library, PSF: Hull, Confidential Memorandum from the President to the Secretary of State, 26 July 1937.

Question 8. What is the basis for your assertion on page 29 of your statement that "U.S. Navy Cmdr. Richard W. Meade . . . formally annexed Christmas Atoll for the Government of the United States in 1872?" Can you document any U.S. activity on the island after 1879? Are you aware that the United Kingdom occupied the island from 1888 to 1939 without protest from the United States?

Answer. On January 8, 1981, the U.S. Civil Aeronautics Board issued an order for Dockets 34405, 35520 and 37429. The CAB after receiving the Department of State's interpretation of the status of Christmas Atoll determined in said order "after carefully reviewing all the pleadings and relevant facts" that "In 1872, the commander of the U.S.S. *Narragansett* formally annexed Christmas Island for the United States". I can also document U.S. activity on the island after 1879. Attached as Appendix B is a Navy Department memorandum on the utility of Christmas Atoll from the strategic standpoint. Said document was issued in 1926 and gives some details of the biological survey of the Line Islands (including Christmas Atoll) taken by Lieutenant Commander King on the U.S.S. *Whippoorwill* in 1924. The statement that the United Kingdom occupied the island (Christmas

Atoll) from 1888 to 1939 without protest from the United States is not true. According to the General Board of the U.S. Navy of 22 April 1926 the United States Government "reserved all questions that might grow out of its (British Government) occupation thereby maintaining in effect the claims of the United States Government to that Island." The Board concluded that the British activities at Christmas Atoll "does not appear to establish a valid claim, because it is not believed that it is necessary for a government having sovereignty over a distant island to maintain on the spot evidence that it is claimed by that government, nor that it must be continuously occupied by the citizens of that government." The Board further stated "such claim by the British Government would appear to be in the nature of a squatters' claim which it is not believed is in accord with international usage in regard to sovereignty of territory" (see U.S. Navy General Board No. 414–3, dated 22 April 1926).

Question 9. On page 31 of your statement, you assert that a one-third interest in Nassau Atoll is currently owned by U.S. citizens. Are you aware of any U.S. citizens who are currently asserting ownership to land on Nassau Atoll?

Answer. On 13 March 1926, Mrs. Fa'animonimo Misimoa nee Asiono of Ululola, Samoa acquired one third interest in Nassau Atoll. Mrs. Misimoa was naturalized as a United States citizen in the United States Consular Court at Apia, Samoa, on 10 July 1883. She still was a United States citizen in 1932, when she passed away. To the best of my present knowledge the testamentary disposition has not occurred to said one-third interest in the real property on Nassau Atoll, but the title is still held by the executor-trustee of the decedent for Mrs. Misimoa's heirs (who are United States Nationals). Nassau Atoll was acquired from Captain John Ellacott, on the death of his wife, for the very reduced price of four thousand dollars, see, H. J. Moors, *With Stevenson In Samoa*, (Boston: Small, Maynard & Company, 1910), p. 198.

Question 10. The case of *Jones* v. *United States*, 137 U.S. 202 (1890), to which you refer on two occasions, dealt with the *jurisdiction* of the United States over criminal offenses committed on Navassa Island, an island in the Caribbean occupied by U.S. citizens pursuant to the Guano Islands. Are you aware of the distinction in international law between jurisdiction and sovereignty?

Answer. Yes. I am aware of the distinction in international law between jurisdiction and sovereignty. I call your attention to 34 Attorney General Opinion 507. entitled: *Sovereignty Over Swain Islands.* U.S. Attorney General John G. Sargent in said opinion stated the "Secretary of the Treasury, under date of February 12, 1869, issued instructions to collectors of the customs directing them to enforce the provisions of the Coastwise Shipping Laws to guano islands appertaining to the United States, and inclosed therewith a list of such islands, among which appears Swain Islands." (Also included on that list were 21 of the atolls covered by three of the four cession treaties (except the Tuvalu Treaty)). "It appears, therefore, that the certificate set forth above was considered by both the Secretary of State and the Secretary of the Treasury as a sufficient proclamation of the extension of sovereignty over the Swain Islands", see: 34 A.G. Op. 507.512. Attorney General Sargent went on and stated that "the sover-

eignty of the United States attached to" Swain Islands on 11 February 1863, because of the executive action under the terms of the Guano Islands Act, see: 34 A. G. Op. 507, 515. A fortiori, if the sovereignty of the United States attached to Swain Islands by the executive action the terms of the Guano Islands Act, then the guano islands appertaining to the United States covered in the inchoate treaties aforementioned are also under the sovereignty of the United States.

Question 11. You refer on numerous occasions to activities undertaken by the United States citizens pursuant to the Guano Islands Act of 1856. Do you contend that the United States obtained sovereignty over islands which "appertained" to the United States under the Act? If so, how do you reconcile this view to the holding in *Grafflin* v. *Navassa Phosphate Co.* that "[T]he provisions of the law entirely negative any idea that such islands were in any sense to become part of the territorial domain of the United States" 35 Fed. Rep. 474 (Cir. Ct. D. Md. 1888).

Answer. I contend that the aforementioned instructions to collectors of customs, under date of 12 February 1869, was a sufficient proclamation of the extension of national external sovereignty by the United States over the aforementioned 21 atolls, and the pretended new title by Britain (now with Tuvalu and Kiribati) and New Zealand were and still are in derogation of the legal rights of the United States. As such it was and still is contrary to international law. See, 34 A. G. Op. 507, 512, 515. In the case of *Grafflin* vs. *Navassa Phosphate Co. of New York*, (*Duncan, Petitioner.*), 35 F. 474, 475, Judge Morris took the view that Navassa could not in "any sense" be "part of the territorial domain of the United States", because "there was no government having territorial jurisdiction" over the island. Judge Morris was saying there was no general applicability of the Constitution with respect to the civil and private rights of the inhabitants on Navassa as there was in the northwest territorial domain of the United States under "the ordinance of 1787," (see, 35 F. 474, 476), i.e., he was drawing a distinction between "incorporated" and "unincorporated" territory of the United States as the Insular Cases did at the turn of the century. The Insular Cases declared Puerto Rico and the Philippines to be "unincorporated" territories, "appurtenant to", and dependencies of, the United States, but not part of the United States. A fortiori, if Puerto Rico was under the national external sovereignty of the United States then the guano islands are also.

Question 12. On page 32 of your statement, you object to a statement by former Deputy Secretary of State Warren Christopher that no other nation supports our claims to the Islands recognized as under the sovereignty of the Cook Islands by the proposed treaty with that nation. Don't you think the universal lack of support for our claims, even among our close allies, reflects the weakness of the claims?

Answer. I was not aware that the United States Government asked other nations to "support" our claims. I believe views stated by the United States in *U.S. For. Rel. 1913*, p. 609. "that when the United States took over the Philippine Islands and Porto Pico, foreign governments were not asked for their acquiescence nor for their recognition, and none was given". I believe the United States claim of sovereignty is paramount to these 26 South Pacific Atolls, and recognition is dispensed with in the course of international practice of new

international rights as a condition of their validity, see the Award in the *Island of Palmas Arbitration* (Annual Digest, 1927–28, Case no. 71). I and our organization believes that the views on this point as expressed by former acting Secretary of State Warren Christopher are at variance with the U.S. Constitution, and belong in a United World Federalist policy statement instead of the view point of the State Department. A large part of the State of Florida would not be part of the United States (if said view on support of claims prevailed), because Fidel Castro's so-called "Government of Cuba" has recognized the Miccosukee Indians as a sovereign independent nation with a territorial boundary of a good part of the State of Florida.

Question 13. On page 36 of your statement, you claim that the children of an American trader who visited the atolls of Atafu, Fakaufu and Nukunomo in the 1870's are scattered among these atolls and thus "United States citizens have been living on all of the atolls continuously since the 1870's." Do you regard the present descendants of this trader as U.S. citizens? If so, on what legal basis?

Answer. Yes, I consider some of present descendants of that American trader as United States citizens. He had children with common law wives on each of the three atolls. They were born prior to the Cable Act. Some of the present descendants have lived on Swains Island for the required period of time to keep there United States Citizenship, others have met the requirement of time in American Samoa, and others fall under the term *United States* as stated by Judge McLaughlin in *United States* v. *Paquet*, 131 F.Supp. 32, citing *Alcantra vs. Boyd*, 222 F.2d 445.

Question 14. On page 37 of your statement you refer to a formal assertion of U.S. sovereignty over Olosenga Atoll (Swains Island) by President Coolidge in 1925. As you know, the treaty with New Zealand recognizes U.S. sovereignty over Swains. You apparently believe that the United States has a valid claim of sovereignty over all the islands covered by the treaties. How do you explain the fact that, prior to 1939, a formal assertion was made only with respect to Swains Island? Why weren't the other islands included?

Answer. First, it is redundant for New Zealand to recognize U.S. sovereignty over Swains in this treaty, because the British Assistant High Commissioner for the Western Pacific formally informed the American Consul at Apia, 10 November 1910, that the British Government recognized Swain's Island as United States territory, see, Consul at Apia to Department. 26 November 1910, File No. 811.0141Q/5. At that time international affairs of New Zealand were imperial questions and were handled by the British Government.

Second, it is not true that a formal assertion was made only over Swains Island prior to 1939. The United States made "proclamation of the extension of sovereignty" over the four Tokelau (Union) Island on 12 February 1869, that is prior to 1939, see 34, A. G. Op. 507, 512.

Third, the reason the others were not placed under the jurisdiction of American Samoa was that the United States Government at the time did not want to place the three northern Tokelaus under the jurisdiction of the Naval Government at Pago Pago.

Question 15. You state on page 38 that the United States sent notes to Britain asserting sovereignty over Pacific Islands prior to 1939. With

the exception of Swains Island, what other instances of a formal assertion of sovereignty can you document prior to that date?

Answer. The United States Government started asserting sovereignty over Pacific Islands in 1813. The United States protected its paramount rights against both Germany and Britain in a constant stream of diplomatic notes ever since the secret British-German agreement on 1886 which pretended to divide the Pacific Islands into British and German "spheres of influence" and drive the American traders out of the islands (American goods at that time were far cheaper than both British and German goods, because of the high transportation costs from Europe to the Pacific Islands at that time period.) As Secretary of State Thomas F. Bayard said in a dispatch of protest:

> "There are islands in the Pacific Ocean known to be wholly in the undisturbed possession of American citizens as peaceable settlers, and there are many others where American citizens have established themselves in common with other foreigners." (see, Moore. I *Digest of International Law*, 423 (1906))

The United States Department of State has informed both the British and later New Zealand that the 1916, 1919, 1925, and 1937 Orders in Council were not binding on the United States, e.g., RG 59, 811.0141 PG/9, dated 9 August 1937. These diplomatic notes were also issued at the time Orders in Council were. All this took place prior to 1939.

The State Department has informed the British and New Zealand governments numerous times after 1939 and before 1939 that these islands were under United States sovereignty, and the U.S. Government did not recognize British or New Zealand sovereignty over said islands, nor their right to administer them (see, Whitemans, *Digest of International Law*).

[From the American Journal of International Law, vol. 5—1911, pp. 782, 805–807, Decisions Involving Questions of International Law]

The Chamizal Arbitration Between the United States and Mexico

Minutes of Meeting of the Joint Commission, June 10, 1911

(Page 782)—"The Joint Commission having been in session every day since the close of argument on June 2, 1911, discussing evidence and argument presented by the agents and counsel of the two governments, proceeded to ballot for the purpose of arriving at a decision upon the following point(s), to-wit:"

"II—Has the United States of America acquired title to the Chamizal tract by prescription?"

(Page 805)—"Prescription"

"In the countercase of the United States, the contention is advanced that the United States has acquired a good title by prescription to the tract in dispute, in addition to its title under treaty provisions.

"In the argument it is contended that the Republic of Mexico is estopped (Page 806) from asserting the national title over territory known as 'El Chamizal' by reason of the undisturbed, uninterrupted and unchallenged possession of said territory by the United States of America since the Treaty of Guadelupe Hidalgo.

"Without thinking it necessary to discuss the very controversial question as to whether the right of prescription invoked by the United

States is an accepted principle of the law of nations, in the absence of any convention establishing a term of prescription, the Commissioners are unanimous in coming to the conclusion that the possession of the United States in the present case was not of such a character as to found a prescriptive title." . . .

. . . (A) "characteristic of possession serving as a foundation for (Page 807) prescription is that it should be peaceful."

"It is quite clear" . . . that "Mexico may have desired to take physical possession of the district, the result of any attempt to do so would have provoked scenes of violence and the Republic of Mexico cannot be blamed for resorting to the milder forms of protest contained in its diplomatic correspondence.

"In private law, the interruption of prescription is effected by a suit, but in dealings between nations this is of course impossible, unless and until an international tribunal is established for such purpose. In the present case, the Mexican claim was asserted before the International Boundary Commission within a reasonable time after it commenced to exercise its functions, and prior to that date the Mexican Government has done all that could be reasonably required of it by way of protest against the alleged encroachment.

"Under these circumstances the Commissioners have no difficulty in coming to the conclusion that the plea of prescription should be dismissed."

NAVY DEPARTMENT,
OFFICE OF CHIEF OF NAVAL OPERATIONS,
Washington, D.C., January 23, 1926.

MEMORANDUM

Subject: The utility of Christmas Island from the strategic standpoint

1. It is presumed that the General Board has seen all the papers covering the legal aspects of the claim of the United States to sovereignty over Christmas Island. Some of these papers, notably the report of Lieutenant Commander King on the biological survey of the Line Islands made by the U.S.S. *Whippoorwill* July 24, 1924 to August 27, 1924 contains descriptive matter covering Christmas Island. The following table of distances from Christmas Island is given as informative:

	Christmas Island	Fanning Island	Jarvis Island	Washington Island	Palmyra Island	Honolulu	Pago Pago
Christmas Island		165	205	240	365	1,161	1,257
Fanning Island	165		262	75	200	1,056	
Jarvis Island	205	262		308	396		
Washington Island	240	75	308		125		
Palmyra Island	365	200	396	125		958	1,316
Honolulu	1,161	1,056			958		
Pago Pago	1,257				1,316		

2. From a study of the geographical location of Christmas Island, with relation to the locations listed in the above table and all other islands, whether in the possession of the United States or of possible allies, or enemies, the Director of War Plans is of the opinion that in the present state of development of the instruments of naval warfare, there are three uses to which Christmas Island could be put in war.

(a) Seaplane base or station for seaplanes in flight between Hawaii and Samoa, and for seaplane operations in the area of Christmas Island.

(b) Submarine base for the support of submarines en route from Hawaii to southwestern points, or for the support of submarines operating in the Christmas Island area.

(c) Radio station.

SEAPLANE BASE

3. An examination of the chart and other data on Christmas Island shows that it is much better adapted for the operation of seaplanes than is Palmyra Island, both as regards landing places for seaplanes and protected anchorage for same, and as regards the erection of facilities for support of seaplanes ashore.

4. As regards location, Christmas Island is slightly better located than Palmyra Island for use as a stopping place in flight between Honolulu and Pago Pago as shown by the following table of distances:

Honolulu to Palmyra	−958
Palmyra to Pago Pago	−1,316
Honolulu to Christmas	1,161
Christmas to Pago Pago	1,257

SUBMARINE BASE

5. Study of H.O. Chart 1839—West Side and Entrance to the Lagoon of Christmas Island—shows that submarines can enter the lagoon for a very short distance, and occupy an area roughly 300 yards square. This is too restricted for extensive operations, but might serve for operations of a minor character. By dredging a distance of approximately 600 yards it appears probable from the chart that entry into the interior of the lagoon could be effected, giving a much larger anchorage area. It appears that approximately 6 feet of ground would have to be dredged away to permit this entrance, and that a total of about 60,000 cubic yards would have to be dredged away.

6. From the soundings given on the chart, it appears that dredging to permit light cruisers to enter the lagoon, would not be practicable.

7. Palmyra Island could not be used for even the most restricted operations of submarines.

RADIO STATIONS

8. The principal advantage of Christmas Island over Palmyra Island for a radio station, is the fact that it would be far easier to conceal a radio station on Christmas Island, so that it could not possibly be seen from seaward and would require a considerable search of the Island to locate it. The only other advantages possessed by Christmas Island over Palmyra Island for a radio station lies in the fact that it would be easier to erect a radio station there, and easier to supply it from time to time. Also, the personnel operating the station would be better off on the larger island. At present it is not understood that the erection of a radio station on any of the Line Islands is contemplated, but in war it might become very necessary for purposes of direction finding in detection of enemy movements.

9. The Director of War Plans Division is of the opinion that the possession of Christmas Island by the United States is desirable for the above strategic reasons, and that the claim of the United States for this Island should be pressed.

W. H. STANDLEY,
Captain, U.S. Navy, Director, War Plans Division.

[From the Congressional Record, Nov. 18, 1980]

TREATY OF FRIENDSHIP WITH THE REPUBLIC OF KIRIBATI

[STATEMENT OF HON. ROBERT K. DORNAN]

Mr. DORNAN. Mr. Speaker, on January 24, 1980, President Carter sent to the Senate a "Treaty of Friendship" with the Republic of Kiribati, formerly the Gilbert Islands. The treaty has not been approved by the Senate Foreign Relations Committee and will receive no action this year. However, in light of the question of the constitutional responsibility of the House of Representatives to pass on the cession of any U.S. territory, I submit for the Record the following article on the treaty by Mr. Mark Seidenberg of Los Angeles, who entertains a longstanding interest in U.S. affairs in the South Pacific.

TREATY OF FRIENDSHIP WITH THE REPUBLIC OF KIRIBATI

On January 24, 1980, President Carter transmitted an inchoate "Treaty of 'Friendship' with the Republic of Kiribati [Executive A, 96th Congress, 2d Session]" to the U.S. Senate, where it was "read for the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations."

The essence of this inchoate treaty is to cede 14 U.S. sovereign Pacific Atolls to the pro-Soviet government of the so-called "Republic of Kiribati (formerly Gilbert Islands), without the approval of the House of Representatives as required by Art. IV, § 3, Cl. 2, of the Constitution of the United States. Each of these atolls has an economic zone with a radius of 200 miles (totaling almost 2 million square miles of ocean) rich in tuna and magnesium nodules.

The so-called "Republic of Kiribati" is known all over the Pacific as the most tyrannical regime in Oceania. Since its independence from Great Britain, the anti-American and pro-Soviet junta now in control of Kiribati has usurped control of Ocean Island and has been subjugating the pro-American Banaban Islanders. Mr. Tabai (President of Kiribati) announced last year that "[i]f the Russians come [to the Gilberts] we would talk to them and not send them away." Fifth columnists in the U.S. Department of State and other departments of the United States Government have been lobbying members of the U.S. Senate in support of this cession treaty.

Both Secretary of State Vance and Governor Coleman of American Samoa have been leaving the erroneous impression with members of the Committee on Foreign Relations of the U.S. Senate that the U.S. Government did not advance its claims of sovereignty to the following 14 atolls until 1939, i.e., they are trying to leave a false impression with these Senators that the U.S. claim is very weak historically in order to get this "Treaty of Friendship" out of that Senate Com-

mittee by placing these atolls histories in "memory holes" [G. Orwell, 1984]: Birnie, Canton, Caroline, Christmas, Enderbury, Flint, Gardner, Hull, McKean Malden, Phoenix, Starbuck, Sydney, and Vostock. The fact is all these islands have been claimed by the United States since the mid-1800's.

Christmas Atoll, the largest of these 14 islands, has a similar historic American connection with the other 13 atolls. [Because of space considerations in this article, I will limit my discussion to Christmas Atoll as an example of the American claims to those 14 islands of American Polynesia.] Christmas Island (largest coral atoll in the world) with an area of 234 square miles (over ten times the size of Manhattan Island in New York City) has been American owned since 1825. The U.S. Government acquired sovereignty over Christmas in the following manner and not in 1939 as the Department of State would want people to believe:

First. Captain John Stetson of New Haven, Connecticut, landed on Christmas Atoll from the American ship *Equator* on February 15, 1825. Finding it not occupied he claimed the island for himself.

Second. By a quit-claim deed of assignment, dated May 11, 1857, John Seteson and his wife sold Christmas Atoll to Alfred G. Benson of Brooklyn, New York. On the same date Alfred G. Benson empowered Captain J. L. Pendleton, Master of the ship *John Marshall*, of New York, to take possession of the island, which was accordingly done on the 20th of June 1858, in the name of, and on behalf of, Alfred G. Benson, and his associates, in full conformity with the Guano Islands Act of August 16, 1856 (48 U.S.C. 1411–1419).

Third. By deed dated May 13, 1857, from Alfred G. Benson, aforesaid, to George W. Benson of Brooklyn, granting all of his rights, title, and interest therein, conveyed to him from John Stetson and wife.

Fourth. By deed dated November 24, 1858, from George W. Benson, aforementioned, to the United States Guano Company, of the City, County, and State of New York, conveying all of his right, title, and interest in said discoveries, ceded to him by deed from Alfred G. Benson. On November 25, 1858 the above two Bensons and seven others organized the United States Guano Company as a New York Corporation, pursuant to and in conformity with the act of the Legislature of the State of New York passed on the fifteenth day of April 1857, entitled: "An Act to authorize the formation of corporations for the purpose of mining, importing and exporting guano and other fertilizers."

Fifth. The United States Guano Company gave an approved bond in accordance with the requirements of the Guano Islands Act (48 U.S.C. 1411–1419) and U.S. Secretary of State Lewis Case issued a certificate to the United States Guano Company for Christmas Atoll on December 29, 1859.

Sixth. On July 20, 1872, Commander Richard W. Meade, U.S.N., of the U.S.S. *Narragansett*, formally annexed Christmas Atoll for the Government of the United States of America.

Seventh. Great Britain tacitly admitted United States sovereignty to Christmas Atoll in correspondence with the United States State Department as late as 1872.

Eighth. Ever since the United States Government formally annexed Christmas Atoll on July 20, 1872, it has been constantly publishing

documents which have included Christmas Atoll as an island belonging to the government of the United States.

This give away treaty must be stopped in the United States Senate. Write and telegram your Senators today and ask them to vote "No" on the "Treaty of Friendship with the Republic of Kiribati [Executive A, 96th Congress, 2d Session]."

This treaty will be first heard in the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations, U.S. Senate and then by the full Committee on Foreign Relations.

[From the Congressional Record, Jan. 30, 1980]

U.S. Interests in the Pacific

[STATEMENT OF HON. WILLIAM E. DANNEMEYER]

Mr. Dannemeyer. Mr. Speaker, I rise to address the House out of a concern for the increasingly diminished U.S. presence abroad. We seem to be living in a period when it is the self-appointed task of the President and the Department of State to dismantle our foreign institutions of trade and defense. The prime example of this (of course, was paying the Panamanians to accept the Panama Canal. This setback in our relations in Central America was exacerbated by the subsequent overthrow of our friend Somoza in Nicaragua. Recent months have seen our interests suffer badly in Iran and Afghanistan.

Now a further development has been brought to my attention by David B. Noland of Canyon Country, Calif. In the following piece, Mr. Nolan places our activities in the Pacific in perspective. If these actions were an isolated instance of U.S. loss of influence they would not be of overwhelming concern. But this seems to be the order of the day, and I fear for the future of this Nation as it retreats before the growing threat of the Soviet bear throughout the world.

I ask unanimous consent that this be printed in the Record.

AMERICAN INTERESTS IN THE PACIFIC

After the giving away of the Panama Canal in which the U.S. even paid for the privilege, our State Department was hard pressed for an encore. It has now turned its attention to redefining American interests in the Pacific.

In 1980 the State Department will push for Senate ratification of two proposals which will turn over U.S. Sovereignty to eighteen Central Pacific Islands and hundreds of thousands of square miles of rich fishing waters. The direct beneficiaries of this largesse are two left leaning emerging nations, the island Republics of Tuvalu and Kiribati. The indirect beneficiary is the Soviet Union with increasing naval and economic clout in the strategic waters at Micronesia and Polynesia.

Our territorial claims being waived include islands in the Line, Phoenix and Ellice groups that have been American controlled since the 1800's. Some like Christmas Island and Hull Island (named after the War of 1812 Commander of the U.S.S. *Constitution*) have rich histories. Nine of these strategic islands have warranted U.S. military bases on them from World War II through the 1970's.

Each of the islands in these widespread groups command a radius of two hundred miles in territorial limits into rich fishing waters. Unfriendly control of these islands could spell economic disaster for the multimillion dollar tuna fishing and canning industry in nearby American Samoa. The Republics of Kiribati (formerly known as the Gilbert Islands) and Tuvalu have already indicated that each plans to charge a heavy "conservation fee" for the future privilege of U.S. fishing interests using what are in reality American waters.

The island Republics of Tuvalu and Kiribati, both under British control until the 1970's, have combined populations of less than 60,000. Yet they clearly have more than enough clout to have the State Department buckle under to their demands.

They are active member states in the anti-American third world conference group called the South Pacific Forum. They have voted against U.S. entry into that organization and have made overtures in favor of the Red Chinese as well as Russians.

The Treaty with Kiribati which cedes fourteen of the eighteen islands in question was signed on 20 September 1979. It is ironic that this unmeritorious action occurred on the Island of Tarawa in which over 3500 Americans gave up their lives in protecting the interest of the United States in the Pacific in World War II.

The State Department hopes for Senate ratification of the Treaty of Friendship with Tuvalu in early 1980. The ratification of this treaty will expedite the further pact with Kiribati.

These current giveaway proposals give nothing in return for the U.S. In fact a power vacuum will be created which will engender further Soviet influence. Already, the Soviets were granted a fishing fleet base in the nearby island of Tonga. With our worldwide naval decline, the Pacafic may never again be known as an American lake. The current giveaway in the South Pacific is only symptomatic of world-wide global retrenchment by the United States.

DEPARTMENT OF STATE,
Washington, D.C., December 26, 1979.

MR. MARK J. SEIDENBERG,
Los Angeles, Calif.

DEAR MR. SEIDENBERG: Your letter on November 11, 1979 to Mr. H. L. Du Four Woolfley has been referred to this office for reply.

The agreement which established joint administration of the Canton and Enderbury Islands by the United States and the United Kingdom was effected by exchange of notes at Washington April 6, 1939. A copy of this agreement is enclosed. It was published by the Department of State as EAS 145 in 1939. The Treaty Office has no record of a prior agreement of August 10, 1938 on this subject.

The 1939 agreement has not been formally terminated but became obsolete when the Gilbert Islands gained their independence on July 12, 1979. Upon entry into force of the treaty of friendship between the United States and the Republic of Kiribati, initialed at Suva, Fiji on May 8, 1979 and signed at Tarawa on September 20, 1979, the United States will relinquish all claims of sovereignty over the Canton and Enderbury Islands, as well as other islands constituting part of the territory of Kiribati. A copy of this treaty is also enclosed.

I hope that this information will be of assistance to you.

Sincerely,

ARTHUR W. ROVINE,
Assistant Legal Adviser for Treaty Affairs.

Enclosures.

Senator MURKOWSKI. The statement, "From a defense perspective, we feel that the treaties adequately protect United States strategic interests. We have made a thorough study of our requirements for the islands covered by the treaties. We do not now have, nor do we foresee, a military requirement anywhere in the immediate area of the islands covered by the treaties."

The letter was dated March 7th, signed by Secretary Weinberger.

I very much appreciate, gentlemen, your testimony at this time. I have no further questions for either of you gentlemen. I very much appreciate your taking your valuable time and the contribution you have made. Your opinions are obviously noted in the record and will be deliberated on by the full Committee.

Senator East, I certainly appreciate your testimony this morning, and I think it has certainly enlightened the particular points that you have made.

As you and I both know, there has been considerable testimony already submitted on this matter during a previous session of Congress, and I really do not see any point in going into anything of a repetitious nature. I think it has been pretty well covered. So, with that, if there are no further comments, I would ask that the prepared statement by Admiral Hanks be submitted for the record, without objection.

[Admiral Hanks' prepared statement follows:]

PREPARED STATEMENT OF REAR ADM. ROBERT J. HANKS

One of the most far-reaching developments on the Far Eastern international scene in recent years has been a steady decline in the strategic position of the United States. From an apogee of unquestioned dominance during the closing months of 1945, U.S. economic strength, diplomatic influence and military power have slipped to the point that, today, they no longer constitute the prime factors in that part of the world. The consequences of this changed situation, for the United States in particular and area nations in general, will be profound in the years ahead.

One of the more obvious indicators of current Far Eastern conditions can be found in the recent appearance of Soviet nuclear-powered, attack submarines in the South China Sea, operating from U.S.-built facilities in Vietnam. In waters which had been controlled exclusively by the United States Navy since it rid them of Japanese sea power during the Second World War, the U.S.S.R. has, for the first time in its 65-year history, acquired a meaningful capability to challenge that traditional American dominance. Deploying ships and support equipment to those former U.S. naval bases, Moscow is now able to operate its submarines in such a way as to menace all shipping lanes from the Strait of Malacca to the Sea of Japan, as well as to imperil the maritime approaches to Australia and New Zealand. Thus, a Soviet naval

threat, which little more than a decade ago would have been unthinkable, is a matter of very unpleasant fact today.

This exploitable Soviet naval capability is, by itself, sufficiently worrisome for the United States and most nations of the Pacific Far East. Free World governments in the region have watched, with increasing apprehension, as the number of warships in the Western Pacific displaying the Hammer and Sickle has consistently expanded. Of commensurate concern to those governments has been a clearly evident deterioration in regional American military prowess, particularly naval.

Along with diminished military strength deployed to the Western Pacific, Washington has also suffered a progressive loss of basing facilities available in the region. Given the vast distances in the Pacific basin—which every experienced sailor appreciates—this loss of basing facilities has exacerbated the effect of actual reductons in American military muscle.

Taken together, these developments have so weakened the U.S. strategic position in the Western Pacific that fundamental American national interests can be placed in considerable jeopardy. The problem now confronting the United States centers on the means by which these unfavorable trends can be reversed and those by which the U.S. strategic position in this critical part of the world can be restored. Along the Western Pacific rimland, except for Vietnam, it appears that strategic planners in Moscow have been looking in vain for openings to exploit, and the region, for the moment, seems relatively safe from further Soviet incursions.

Confronted with this reality and disposing the newly-acquired outreach provided by a greatly expanded Red Navy, the Kremlin has necesarily turned its attention eastward to the islands of the South Pacific. As the flood tide of nationalism continues to transform colonial holdings into infant, independent nations, each inevitably plagued by economic and other problems, opportunity has again attracted the roving, imperial Soviet eye. Samoa and Tonga, for example, have already heard the siren call issuing from Moscow.

As with Mauritius in the southern Indian Ocean, the Soviet Union used its gigantic fishing fleet as the opening wedge in Samoa and Tonga. First, Moscow offered to provide the islands with attractively priced fish—caught and canned by Soviet ships—to ease the islands' immediate problems of food supplies. Close on the heels of that ploy came the offer to construct modern jet airports and up-to-date harbor facilities. The previous experience in Mauritius makes it reasonably clear that the next Soviet step would have been to arrange for rest and rehabilitation calls for the crews of the ships providing the fish. Shortly thereafter, Russian men-o'-war could be expected to make an appearance, as the islands fell more deeply in debt to Moscow. A foothold would thus have been established as it has been elsewhere.

More importantly, Soviet warships—and perhaps aircraft—would then be in a position to interdict a major Pacific Ocean trade artery. This particular one stretches from the west coast of the United States and the Panama Canal directly to America's main allies in the southwestern Pacific: Australia and New Zealand. The importance of this artery understandably accounts for the intense concern over such Soviet moves expressed to me in Canberra, Australia, during meetings

there in December of 1976 with the commanders of the navies of these two allies.

The present political leaders of Samoa and Tonga did not look with much favor on the proposals put forward by Moscow. Indeed, the Soviet offers were summarily rejected. Nevertheless, it cannot be assumed that the last word on the subject has been spoken. There can be no assurance that the present leaders—backed into an economic and political corner by the myriad problems besetting these embryonic nations—will not change their minds, or that some succeeding and less suspicious regime will view the Soviet proposals in the same light.

As the winds of independence continue to blow throughout the Central and South Pacific, it can be expected that further, similar Soviet efforts will materialize. The United States and its allies would be well advised to keep a weather eye on this remote part of the world for any early indications that Moscow has selected yet another target for exploitation.

It is abundantly evident that Soviet influence in the Western Pacific is on the rise while that of the United States continues to wane from its post-World War II peak. As nations around the Far Eastern rimland gradually recovered from the wartime devastation they had suffered, it was inevitable that American influence would diminish. What has made the developing situation considerably less than encouraging is the manifest fact that the resulting power vacuum has been filled primarily by the Soviet Union rather than by the resuscitated nations themselves.

At the moment, the United Statese still enjoys access to major military facilities in the Philippine archipelago: the naval base at Subic Bay and the air base at Clark Field, both on the island of Luzon. In contrast to 1941, however, there are no significant American ground forces in the Philippines. Moreover, utilization of the foregoing facilities has been somewhat circumscribed by the recent lease which renewed that access. What will happen when the current agreement comes up for review in 1984 is anyone's guess.

The issue, of course, may not wait for that date. At present, the most serious challenge to continued American use of these facilities stems from the internal political condition of the Philippines. Here, one is forced to wonder if the United States is facing very much the same sort of situation it did in Iran in the late 1970's and early 1980's. The strategic impact of U.S. ejection from Subic Bay and Clark Field hardly needs elaboration.

If one looks at a chart of the Southwest Pacific Ocean, it becomes clear that the islands in question sit astride the lines of communication between the United States and Australia and New Zealand as well as the more southerly passages connecting the Indian and Pacific Oceans: the Timor Sea, Torres Strait separating New Guinea and Australia, and Bass Strait between Australia and Tasmania.

In the event of conflict with the Soviet Union, the West could find the South China Sea and the Strait of Malacca too dangerous to use. The more southerly passages would then become of immense importance.

Loss of immediate U.S. access to facilities in the islands being considered by this Committee would be bad enough in such circumstances. The problem would be compounded by an order of magnitude if those

facilities were subsequently made available to and utilized by the Soviet Union.

In no sense am I arguing that the United States must maintain sovereignty over all 25 of the islands and atolls in contention. Rather, I would suggest that the most rational approach to the problem should begin with a military and strategic assessment of their harbors and airfields, selection of those which would guarantee American control of this vast expanse of ocean, and their retention by the United States. Failing this, the treaties should be amended to include iron-clad guarantees that U.S. access will be preserved and third countries excluded.

The foregoing examination should be undertaken now, with full regard for the long-term interests of this country and in light of potential future threats to those interests. Before such far-reaching action as represented by these treaties is taken, it is essential that U.S. national security interests—present and prospective—be safeguarded to the best of our ability. In my considered judgment, pledges to "consult" with the United States before allowing third-nation forces in is, quite simply, unacceptable.

Senator MURKOWSKI. Senator East, do you have anything further?

Senator EAST. No. First, I would like to thank you, Mr. Chairman, you personally and the Foreign Relations Committee as a committee for allowing us this opportunity to come to testify. We deeply appreciate your serious consideration of our concerns.

I would like to clarify as a procedural matter, which I think you had already indicated, that my written statement plus the written reservations be made a formal part of this record.

[Senator East's prepared statement and reservations follows:]

PREPARED STATEMENT OF SENATOR JOHN P. EAST

Mr. Chairman, I wish to thank the Committee for this opportunity to submit testimony to the Senate Committee on Foreign Relations on the Treaty of Friendship with the Republic of Kiribati, the Treaty of Friendship with Tuvalu, the Treaty of Friendship and Delimitation of the Maritime Boundary with the Cook Islands, and the Treaty with New Zealand on the Delimitation of the Maritime Boundary between the United States and Tokelau.

There are three principal concerns that I have about these treaties. In general, these are: (1) the surrender of Sovereignty by the United States over approximately 6 million square miles of United States territory; (2) the continuing and, in the near future, the increasing, strategic and economic importance of the island territories in question and their surrounding waters; and (3) indications of increasing Soviet interest and possible influence in the islands, the surrounding waters, the governments and resources in the area.

Under these four treaties, the United States relinquishes sovereignty over all of the islands. Although there are indeed conflicting claims of sovereignty, the United States Department of State has in the past asserted U.S. sovereignty over the islands when it met with the Departments requirements at that particular time. According to the Annual Message of the President transmitted to the Congress, on December 3, 1888; p. 713, 728, Great Britain tacitly admitted United States sovereignty over Christmas Atoll in Kiribati in 1872. On July 19, 1955,

Acting U.S. Secretary of State Hoover in a letter to the British Ambassador to the United States wrote:

"Upon being apprised of this development the Department of State informally advised the British Embassy that the suggestion that this Government, its vessels or employees should seek license from, or pay a fee to another Government, to conduct operations in territory to which it asserts sovereignty, could not be entertained. It now appears probable that the Fish and Wildlife Service, for the purpose of its scientific investigation, will in fact soon be obliged to extend its activities to the territorial waters of the Island. In the circumstances of its assertion of sovereignty over Christmas Island the United States Government cannot permit its employees, acting in the discharge of their official duties on a vessel chartered by the United States Government, to apply for a license to operate in these waters."

The United States Supreme Court, in *Vermilya-Brown Co.* v. *Connell* (335 U.S. 377, 397) (1948) held that:

"Possesions such as Puerto Rico, Guam, the guano islands, which the Court mentions as standards for the treatment of Bermuda, are, in vital respects, as different as night from day. Not one of them is subject to even a frivolous claim adverse to our complete ownership. They belong to us or they belong to no one. They are ceded territory over which United States sovereignty is as complete and as unquestioned as over the District of Columbia and they are subject to no dual control or divided allegiance. They are incorporated into our economy freely trading in our markets, and "protected" by our tariff walls. They are integrated with our social and, in some degree at least with our political life as well; some of them being authorized to send delegates to our Congress."

Finally, Mr. Chairman, I would like to cite a letter from J. P. McCartan, International Affairs Officer of the International Division and Director of Laboratories, Andrews Air Force Base, United States Department of the Air Force, concerning a letter of Mark Sidenberg, President of the Society for the Protection of American Sovereignty, dated February 10, 1982.

"It appears to us that Mr. Seidenberg has researched the Canton Auxiliary Airfield complex rather thoroughly and has cited valid U.S. decisions which would indicate that the Treaty of Friendship between the United States of America and the Republic of Kiribati of 1979 may have relinquished sovereign claims of islands which were rightfully ours since the 1800s."

Mr. Chairman, I do not wish to belabor the point of sovereignty, which was raised at the last hearing, but I believe the American people and the Congress should carefully consider any surrender of sovereignty over U.S. territory.

The islands concerned in these treaties are of considerable potential and strategic importance to the United States. Their names may sound strange to most Americans, but perhaps they are more familiar under the names by which they were previously known—Kiribati was previously known as the Gilbert Islands, and the whole chain of islands and the region itself was of immense importance in World War II and the Korean War. The strategic value of these islands today is that they provide a "back up" facility in the South Pacific in the event of

hostilities in the Western Pacific. Brigadier General Reuben Autery, B–52 commander at Guam, has stated that "his aircraft would probably be the first two try to seal the Soviet fleet in the Sea of Japan" in the event of war. The United States maintained bases at Canton, Christmas, Malden, Enderbury, Gardner, Sydney, Birnie, and Hull in Kiribati, in Funafuti and Nukufuteau in Tuvalu; and at Penrhyn in the Cook Islands until these treaties were signed in 1979.

I fear that the economic value of the islands has not been given proper weight in the deliberations that have culminated in these treaties Consider the fishing industry. The Honorable William Bodde, Jr., Ambassador to Fiji, the Kingdom of Tonga, and Tuvalu and minister to the Republic of Kiribati testified, "when we were preparing our negotiating position, we consulted with the tuna industry, particularly in California with Van Camp and with Starkist, and with tuna boat owners in San Diego." However, Mr. David Burney of the U.S. Tuna Foundation writes that "the U.S. tuna industry was apprised by representatives of the Department of State that the treaties had been concluded and were the subject of Senate ratification. The industry was told that the treaties became necessary after the State Department had opined that the U.S. did not have any legal basis for claiming ownership of the area in question." I fear, Mr. Chairman, that the interests of the American fishing industry may not have been fully considered in the negotiation of these treaties, and I urge close examination of the treaties for the purpose of ascertaining that the rights and interests of American workers and businessmen are fully secured.

In the area of strategic minerals, the region promises to become important in the near future. The United States imports 98% of our manganese, a mineral vital to the American steel industry and obviously vital to our continued military and naval security. The United States, the United Kingdom, France, West Germany, and Japan have developed the technology to extract manganese, nickel, copper, and cobalt from bulbous nodules found on the sea bed. The efficiency of this technology is not yet fully developed, but it will advance in the future and could provide an immense contribution to the economic and technical resources of the Free World.

The waters surrounding the islands are saturated with manganese nodules. Their presence, and the possibility of oil deposits in the area, may explain the growing interest of the Soviet Union in the region. A Soviet vessel, the *Kallisto*, has been reported to have been conducting voyages in the area exploring for minerals. Although I have been assured that the islands are pro-Western, the current Prime Minister of Kiribati, Mr. Ieremia Tabai, is quoted as having stated "If the Russians come to the Gilberts (later to become Kiribati), we will talk to them and not send them away." Mr. Chairman, I would point out that the total population of these islands is small—a total of about 75,000—and their defense and security resources are also undeveloped. If the Soviets, whose naval development and deployment in the Pacific are becoming well known, entertain hostile or aggressive designs in the area, I believe the United States must retain a continuing interest and commitment to their independence and security.

PROPOSED RESERVATIONS TO THE TREATIES

Mr. Chairman, I am not arguing that the United States reject the treaties at this point. I am suggesting that it would be prudent, that the security and national interests of the United States demand, that we re-examine the treaties at this point. I am suggesting that it would be prudent, that the security and national interests of the United States demand, that we re-examine the treaties and add certain reservations to them in order to protect our interests and rights in the region. The reservations that I have in mind will protect U.S. interests in fishing and seabed mining and safeguard against Soviet influence. I would emphasize that these proposals are in the form of reservations, not amendments, and thus will not require renegotiation of the treaties.

THE TREATY WITH KIRIBATI

The Treaty with Kiribati provides:

(1) for consultation on any matters of mutual concern and need and specifies that any military use of the islands by third parties shall be the subject of such consultations.

(2) any future use of the American built facilities on Canton, Enderbury, and Hull will not be made available to third parties for military purposes without U.S. agreement;

(3) for consultation regarding matters relating to conservation, management, and utilization of fisheries of mutual interest;

(4) for cooperation between the two countries in protecting the unique material and cultural resources of Kiribati; and

(5) joint utilization of the facilities constructed by the U.S. on Canton.

Fishing in the Kiribati waters was only mentioned in an agreed-to minute to the treaty. In this minute the United States did not secure the right to fish but only the assurance that American vessels or vessels supplying the canneries in American Samoa would be "sympathetically considered without discrimination" when the vessels applied for fishing rights.

The treaty also prohibits the use of Canton, Enderbury, and Hull by third parties without U.S. agreement. The other eleven locations are not prohibited to third parties, although Kiribati must consult with the U.S. on third party use of them. Consultation rights are inadequate for strategic needs. Kiribati could allow third parties to use these locations following a mere gratuitous "consultation" with the United States.

The reservations I am proposing for the Treaty with Kiribati will:

(1) Not allow third country military use of the relinquished territory without consultation with and approval of the U.S. Government.

(2) Provide that the government of Kiribati not impose unreasonable rents or fees on the leasing or other use of its territory for military purposes by the U.S. Government.

(3) Provide for the right of U.S. nationals to mine the seabeds and to fish in Kiribati fishery limits without regard to the termination of the Treaty. These reservations, Mr. Chairman, protect U.S. interests

and rights in Kiribati and do not impose unfairly or unreasonable upon the Kiribati people or government.

THE TREATY WITH TUVALU

The treaty with the government of Tuvalu provides:

(1) for consultation in times of "international crisis" should the United States request the use of Tuvaluan territory for military purposes or should Tuvalu request assistance and support;

(2) the two governments also agree to consult regarding any use of Tuvaluan territory for military purposes by third parties;

(3) provides for cooperation between Tuvalu and American Samoa in the economic development of fisheries off their respective coasts;

(4) the United States and Tuvalu agree to consult directly and through regional organizations in matters relating to conservation, management, utilization, and exploitation of fisheries resources.

The treaty with Tuvalu secures much less for the U.S. than does the treaty with Kiribati. The term "international crisis" is ambiguous and does not provide the U.S. with any true assurance that the U.S. can employ the previously American made facilities.

Furthermore, the U.S. is not protected under the terminology in this treaty anymore than in the treaty with Kiribati. The reservations I am proposing for the Treaty with Tuvalu are identical to those I have proposed for the Treaty with Kiribati.

THE TREATY WITH THE COOK ISLANDS

I am also proposing reservations to the treaty with the Cook Islands that specifies U.S. consultation with the state for third party use of the ceded atolls for military purposes along with reservations that will insure the right to fish and mine the seabeds in the Cook Island waters. While the Cook Islands are part of a self-governing "Associated State" relationship with New Zealand and New Zealand is responsible for the defense of the Cook Islands, I am concerned that the Cook Islands would not agree to consult with the United States on the use of its territory by third parties for military purposes.

THE TREATY WITH NEW ZEALAND IN REGARDS TO TOKELAU

The treaty with New Zealand in regard to the delimitation of the maritime boundary with the Tokelau atolls is the most favorable of these treaties for the United States. This treaty differs from the others in that, unlike those negotiated under the Carter Administration, the United States receives unquestionable sovereignty over Swain Island in exchange for renouncing sovereignty over the Tokelau islands. The alignment of Tokelau with New Zealand alleviates the responsibility of the United States for providing "strategic denial" in the area. Nevertheless, since the United States is completely renouncing sovereignty over the three Tokelauan atolls, I am proposing two reservations to be encompassed in the treaty. These reservations provide for the right of U.S. nationals to mine the seabed within the natural re-

source jurisdiction of Tokelaus and the right to fish within the fishery limits of Tokelau without regard to termination of the treaty.

Mr. Chairman, the United States Constitution provides under Article IV, section 3, clause 2, that the U.S. House of Representatives must approve passage of any territory that is ceded from United States sovereignty. Under my reservations the House of Representatives must vote on the treaties before they can be ratified.

Mr. Chairman, the reservations I have offered for your consideration are intended to address and correct two central misgivings with these treaties that I share with a number of our colleagues. First, we must correct an apparent oversight in the current texts of the treaties in regard to our national security and our international strategic posture. Of equal importance, we must ensure our future access to mineral and fishing resources that are vital to the growth and stability of our nation as well as to that of the citizens of these young nations.

Mr. Chairman, I thank you and the Committee for your time, and I will of course be happy to answer any questions that you might have.

[In the Senate of the United States—98th Congress, 1st Session]

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KIRIBATI

Purpose: To condition entry into force of the Treaty on the agreement of the Government of the Republic of Kiribati not to impose unreasonable rents or fees on the leasing or other use of Kiribati territory for military purposes by the United States Government.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Government of the Republic of Kiribati agrees—

"(1) to permit use of its territory for military purposes by the Government of the United States of America and not to impose unreasonable rents or fees for the leasing or other use of its territory by such Government for such purposes; and

"(2) to uphold its obligations under paragraph (1) without regard to any termination of the Treaty".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KIRIBATI

Purpose: To condition entry into force of the Treaty on the agreement of the Republic of Kiribati not to allow third party military use of its territory without consultation with and approval of, the United States Government.

Before the period at the end of the resolution of ratification, insert a comma and the following "subject to the reservation which shall be made a part of the instrument of ratification, that before the date if the exchange of the instruments of ratification of the Treaty, the Republic of Kiribati agrees—

"to consult with the Government of the United States of America before permitting use of its territory for any military purpose by any other foreign country;

"(2) not to permit the establishment of a military base on its territory by any other foreign country without the approval of the Government of the United States of America; and

"(3) to uphold its obligations under paragraphs (1) and (2) without regard to any termination of the Treaty".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KIRIBATI

Purpose: To condition the entry into force of the Treaty on the enactment of legislation transferring sovereignty over certain islands of Kiribati.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Congress has exercised its power under article IV, section 3, clause 2 of the Constitution, relating to the disposal of territory or other property belonging to the United States, by enacting legislation necessary to implement Article I of the Treaty by transferring to the Republic of Kiribati sovereignty over the islands of Canton (Kanton), Enderbury, Hull (Orona), Birnie, Gardner (Nikumaroro), Phoenix (Rawaki), Sydney (Manra), McKean, Christmas (Kiritimati), Caroline, Starbuck, Malden, Flint, and Vostock".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KIRIBATI

Purpose: To condition the entry into force of the Treaty on the agreement by the Government of the Republic of Kiribati to the right of United States nationals to mine the seabed without regard to termination of the Treaty.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Government of the Republic of Kiribati agrees that United States citizens and nationals (including any corporation if 50 percent or more of its outstanding capital stock is owned, directly or indirectly, by United States citizens or nationals) have the right to mine the seabed and the subsoil of submarine areas within the natural resource jurisdiction of Kiribati without regard to any termination of the Treaty".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KIRIBATI

Purpose: To condition the entry into force of the Treaty on the agreement by the Government of the Republic of Kiribati that United

States flag vessels have the right to fish within the fishery limits of Kiribati without regard to termination of the Treaty.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of exchange of the instruments of ratification of the Treaty, the Government of the Republic of Kiribati agrees that United States flag vessels have the right to fish within the fishery limits of Kiribati without regard to any termination of the Treaty".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND TUVALU

Purpose: To condition entry into force of the Treaty on the agreement of the Government of Tuvalu not to allow third party military use of its territory without consultation with and approval of, the United States Government.

Before the period at the end of the resolution of ratification, insert a comma and the following "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Government of Tuvalu agrees—

"to consult with the Government of the United States of America before permitting use of its territory for any military purpose by any other foreign country;

"(2) not to permit the establishment of a military base on its territory by any other foreign country without the approval of the Government of the United States of America; and

"(3) to uphold its obligations under paragraphs (1) and (2) without regard to any termination of the Treaty".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND TUVALU

Purpose: To condition entry into force of the Treaty on the agreement of the Government of Tuvalu not to impose unreasonable rents or fees on the leasing or other use of Tuvaluan territory for military purposes by the United States Government.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Government of Tuvalu agrees—

"(1) to permit use of its territory for military purposes by the Government of the United States of America and not to impose unreasonable rents or fees for the leasing or other use of its territory by such Government for such purpose; and

"(2) to uphold its obligations under paragraph (1) without regard to any termination of the Treaty".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND TUVALU

Purpose: To condition the entry into force of the Treaty on the enactment of legislation transferring sovereignty over certain islands of Tuvalu.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Congress has exercised its power under article IV, section 3, clause 2 of the Constitution, relating to the disposal of territory or other property belonging to the United States, by enacting legislation necessary to implement Article I of the Treaty by transferring to Tuvalu sovereignty over the islands of the Funafuti Atoll, the Nukufetau Atoll, and the islands known variously as Nukulaelae or Nukulailai and Niulakita or Nurakita".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND TUVALU

Purpose: To condition the entry into force of the Treaty on the agreement of the Government of Tuvalu to the right of United States nationals to mine the seabed without regard to termination of the Treaty.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Government of Tuvalu agrees that United States citizens and nationals (including any corporation if 50 percent or more of its outstanding capital stock is owned, directly or indirectly, by United States citizens or nationals) have the right to mine the seabed and subsoil of the submarine areas within the natural resource jurisdiction of Tuvalu without regard to any termination of the Treaty".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND TUVALU

Purpose: To condition the entry into force of the Treaty on the agreement by the Government of Tuvalu to the right of United States flag vessels to fish within the fishery limits of Tuvalu without regard to termination of the Treaty.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of instruments of ratification of the Treaty, the Government of Tuvalu agrees that United States flag vessels have the right to fish within the fishery limits of Tuvalu without regard to any termination of the Treaty".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS OF FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS

Purpose: To condition entry into force of the Treaty on the agreement of the government of the Cook Islands not to allow third country military use of its territory without consultation with, or approval of, the United States Government.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the government of the Cook Islands agrees—

"(1) to consult with the Government of the United States of America before permitting use of its territory for any military purpose by any other foreign country; and

"(2) not to permit the establishment of a military base on its territory by any other foreign country without the approval of the Government of the United States of America".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS OF FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS

Purpose: To condition entry into force of the Treaty on the agreement of the government of the Cook Islands not to impose unreasonable rents or fees on the leasing or other use of Cook Island territory for military purposes by the United States Government.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the government of the Cook Islands agrees—

"(1) to permit use of its territory for military purposes by the Government of the United States of America and not to impose unreasonable rents or fees for the leasing or other use of its territory by such Government for such purpose; and

"(2) to uphold its obligations under paragraph (1) without regard to any termination of the Treaty".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS OF FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS

Purpose: To condition the entry into force of the Treaty on the enactment of legislation transferring sovereignty over certain of the Cook Islands.

Before the period at the end of the resolution of ratification, insert a comma and the following: subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Congress has exercised its power under article IV, section 3, clause 2 of the Constitution, relating to the disposal of territory or other property belonging to the United States, by enacting legislation necessary to implement Articles III and V of the Treaty by transferring to the Cook Islands sovereignty over the islands of Penrhyn, Pukapuka (Danger, Manihiki, and Rakahanga and sovereignty and jurisdiction over the waters, seabed, and subsoil on the side of the maritime boundary (determined under Article I of the Treaty) adjacent to the Cook Islands".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS ON FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS

Purpose: To condition the entry into force of the Treaty on the agreement by the government of the Cook Islands to the right of United States nationals to mine the seabed.

Before the period at the end of the resolution of ratification, insert a comma and the following "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of exchange of the instruments of ratification of the Treaty, the government of the Cook Islands agrees that United States citizens and nationals (including any corporation if 50 percent of more of its outstanding capital stock is owned, directly or indirectly, by United States citizens or nationals) have the right to mine the seabed and subsoil of the submarine areas within the natural resource jurisdiction of the Cook Islands."

[In the Senate of the United States—98th Congress, 1st Session]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS ON FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS

Purpose: To condition the entry into force of the Treaty on the agreement by the government of the Cook Islands to the right of United States flag vessels to fish within the fishery limits of the Cook Islands.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratifications of the Treaty, the government of the Cook Islands agrees that United States flag vessels have the right to fish within the fishery limits of the Cook Islands".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND NEW ZEALAND ON THE DELIMITATION OF THE MARITIME BOUNDARY BETWEEN TOKELAU AND THE UNITED STATES OF AMERICA

Purpose: To condition the entry into force of the Treaty on the agreement by the Government of New Zealand to the right of United States nationals to mine the seabed within the natural resource jurisdiction of Tokelau.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Government of New Zealand agrees that United States citizens and nationals (including any corporation if 50 percent of more of its outstanding capital stock is owned, directly or indirectly by United States citizens or nationals) have the right to mine the seabed and the subsoil of the submarine areas within the natural resource jurisdiction of Tokelau".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND NEW ZEALAND ON THE DELIMITATION OF THE MARITIME BOUNDARY BETWEEN TOKELAU AND THE UNITED STATES OF AMERICA

Purpose: To condition the entry into force of the Treaty on the agreement by the Government of New Zealand, on behalf of Tokelau, to the right of United States flag fishing vessels to fish within the fishery limits of Tokelau without regard to termination of the Treaty.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Government of New Zealand, on behalf of Tokelau, agrees—

"(1) that United States flag vessels have the right to fish within the fishery limits of Tokelau without regard to any termination of the Treaty; and

"(2) that any grant of self-determination to the Tokelau will be made subject to Tokelau assuming the obligations of New Zealand under such agreement".

[In the Senate of the United States—98th Congress, 1st Session]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND NEW ZEALAND ON THE DELIMITATION OF THE MARITIME BOUNDARY BETWEEN TOKELAU AND THE UNITED STATES OF AMERICA

Purpose: To condition the entry into force of the Treaty on the enactment of legislation transferring sovereignty over certain islands of Tokelau.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which shall be made a part of the instrument of ratification, that before the date of the exchange of the instruments of ratification of the Treaty, the Con-

gress has exercised its power under article IV, section 3, clause 2 of the Constitution, relating to the disposal of territory or other property belonging to the United States, by enacting legislation necessary to implement Articles III and V of the Treaty by transfering to New Zealand, on behalf of Tokelau, sovereignity over the islands of Atafu, Nukunonu, and Fakaofo and sovereignity and jurisdiction over the waters, seabed, and subsoil on the side of the maritime boundary (determined under Article I of the Treaty) adjacent to Tokelau".

Admiral MOORER. Mr. Chairman, may I make a brief statement?

In the first place, I want to lend my unqualified support to the position taken by Senator East, which I think is based entirely on good, solid common sense by one who lives in the real world.

I came here this morning because I must say I am very much concerned not so much for myself but for my children and grandchildren over a trend, a mindset, if you will, that exists in the legislative and executive branches of this government that we must divest ourselves of all areas where we have sovereignty that otherwise people will hate us, and if we do, people will love us.

And consequently, it is somehow immoral to protect your own national interest. At the same time, we laud the British for going all the way down to the Falkland Islands, where there is a major military effort, and engage in a major conflict over what they consider to be their sovereign territory.

And consequently, I think our position is entirely opposite to that taken by the British, which they consider to be theirs.

Furthermore, I think that it is high time that the United States begin to ask itself one question. What is in our national interest? And we should no longer spend our resources and our time engaging ourselves in worldwide social reform, because we should put our eye on the British as well as the Soviets, and recognize what we are really up against.

It boggles my mind that people cannot see what the Soviets are up to. They say what they are going to do, and they do it, and yet we ignore it, and I think that unless significant safeguards are placed in these treaties, as outlined by Senator East, we are going to live to regret it, just like we are going to live, as we already have lived to regret the disaster of the Panama Canal Treaties.

Thank you, Mr. Chairman.

Admiral HANKS. Mr. Chairman, may I add a quick footnote? I fully support what Admiral Moorer and Senator East have said. In 1981, I wrote a short book on the strategic position of the United States in the Far East, and I would be very pleased to provide any member of the Committee who might like to have one with a copy.

Senator MURKOWSKI. Did you request that your book be entered into the record?

Admiral HANKS. No. I would make it available to any member of the Committee who would like to have it. I think it is far too long to muddy up the record.

Senator MURKOWSKI. Well, I would like to have a copy of it.

If there are no further comments or statements, the hearing is terminated. And I thank the gentlemen and also Senator East for the testimony given this morning. The hearing is adjourned.

[Whereupon, at 11 a.m., the Committee adjourned, subject to call of the Chair.]

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